

No. 10273

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United States  
Circuit Court of Appeals  
For the Ninth Circuit. *VR*

— *2344*  
JOSEPH DI MARZO,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

—  
Transcript of Record  
—

Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

FILED

AUG-6-1941

PAUL P. C. RICH.

CLERK



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Circuit Court of Appeals

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Central Division





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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

MORRIS LAVINE, Esq.  
620 Bartlett Bldg.  
Los Angeles, Calif.

For Appellee:

LEO V. SILVERSTEIN,  
United States Attorney  
JAMES L. CRAWFORD and  
NORMAN W. NEUKOM,  
Assistants United States Attorneys  
600 U. S. Post Office & Court House  
Bldg.  
Los Angeles, Calif. [1\*]

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

At a stated term, to-wit: The February Term, A. D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 9th day of September in the year of our Lord one thousand nine hundred and Forty-two.

Present: The Honorable Peirson M. Hall, District Judge.

No. 15,500-PH Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH DI MARZO,

Defendant.

ORDER FOR FURTHER HEARING ON MOTIONS TO QUASH AND FOR A CONTINUANCE

This cause coming on for jury trial of defendant Joseph Di Marzo; James L. Crawford, and N. W. Neukom, Assistant U. S. Attorneys, appearing as counsel for the Government; Morris Lavine, Esq., appearing as counsel for the said defendant, who is present; and Wm. J. White, Court Reporter, being present and reporting the proceedings:

Attorney Lavine moves that the jurors be excluded from the court room for the purpose of being heard on two motions. Attorney Neukom objects, and after roll call of the jury the pros-

pective jurors are ordered to absent themselves from the court room until 11:05 A.M.

Attorney Lavine reviews the case and the proceedings heretofore had in this court, and moves to quash, or in lieu thereof, for a continuance, which is objected to by Attorney Neukom.

At 11:04 A.M. the Court declares a fifteen minute recess and orders that all jurors appearing for impanelment be excused until 2 P.M., Sept. 10, 1942.

At 11:05 A.M. all prospective jurors return to the court room and are informed by the clerk to return on September 10, 1942, at 2 P.M., as heretofore ordered by the Court.

At 11:37 A.M. court reconvenes herein and all being present as before, it is ordered to proceed.

Attorney Neukom addresses the Court, stating that he has teletyped the Attorney General, a copy of which is ordered filed, and Attorney Neukom proceeds to argue to the Court in opposition to defendant's motions to quash and for a continuance.

The Court states that inasmuch as Judge Ling has passed upon the objections to the jurisdiction of the Court, it will only hear argument on motion [12] for a continuance and motion to quash.

Attorney Lavine objects further to the Court's proceeding with trial on the additional grounds that the defendant, being an alien enemy confined in an internment camp, the restrictions of which prohibit free consultation with counsel in preparation of the case for trial, and moves for a con-

tinuance for the duration of the war. Attorney Neukom objects.

Attorney Lavine now moves the Court to quash the Indictment, on the grounds that the Grand Jury, who returned the Indictment, was composed solely of men and that at no time has either the Grand Jury or the Petit Jury been composed of both men and women.

The Court, thereupon, orders that further hearing on the motions to quash and for a continuance be, and they hereby are, continued to 2 P.M. September 10, 1942, at which time the jurors will be present for proceedings on trial in lieu of a denial of said motions of defendant. [13]

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At a stated term, to-wit: The February Term, A. D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 10th day of September in the year of our Lord one thousand nine hundred and Forty-two.

Present: The Honorable Peirson M. Hall, District Judge.

No. 15,500-PH Crim.

[Title of Cause.]

ORDER DENYING MOTION TO QUASH AND  
FOR CONTINUANCE

This cause coming on for further hearing on motions to quash and for a continuance and for

jury trial of defendant Joseph Di Marzo; James L. Crawford and Norman W. Neukom, Assistant U. S. Attorneys, appearing as counsel for the Government; Morris Lavine, Esq., appearing as counsel for the said defendant, who is present; and Wm. J. White, Court Reporter, being present and reporting the proceedings, and counsel for the Government answering ready, and counsel for the defendant stating he is not ready to proceed with trial until the disposition of motions has been made, which are now before the Court; and at request of the Court,

Counsel approach the bench and, out of hearing of those in attendance upon the Court, including the prospective jurors called for impanelment herein, discuss the motions to quash and for a continuance, and also discuss the immunity of counsel for the defendant in connection with the Act of 1917 entitled, "Trading with the Enemy."

The Court orders motions to quash and for a continuance denied, with exceptions allowed counsel for the defendant. \* \* \* [14]

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At a stated term, to-wit: The September Term, A. D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 17th day of September in the year of our Lord one thousand nine hundred and Forty-two.

Present: The Honorable Peirson M. Hall, District Judge.



[Title of Cause.]

## BEGINNING OF TRIAL

This cause coming on for further jury trial of defendant Joseph Di Marzo; James L. Crawford and Norman W. Neukom, Assistant U. S. Attorneys, appearing as counsel for the Government; Morris Lavine, Esq., appearing as counsel for the said defendant, who is present; and Ferol M. Harvey, Court Reporter, being present and reporting the testimony and the proceedings, it is ordered to proceed.

Attorney Lavine argues to the Court in support of the defendant's plea of once in jeopardy citing authorities in support thereof. Attorney Neukom argues in opposition to the said plea of once in jeopardy citing authorities.

On motion of Attorney Lavine it is ordered that an order be entered herein nunc pro tunc as of August 8, 1942, and Attorney Neukom stipulates thereto that a plea of once in jeopardy is entered in Case No. 15,500-PH Crim. in behalf of defendant Di Marzo, based upon the fact that by virtue of the acquittal of Helen Beverlin in Case No. 15,499-H Crim.

- The Court now overrules the objections of Attorney Neukom to the defendant's introduction of evidence in his plea of once in jeopardy and thereupon allows counsel for defendant to present evidence in support of defendant's plea of once in jeopardy.

At 10:55 A.M. court recesses. At 11:08 A.M. Court reconvenes and all appearing as before, including the jury, counsel so stipulating, it is ordered to proceed.

Anthony Joyce is recalled to the stand and testifies on direct examination by Attorney Lavine in support of defendant's plea of once in jeopardy and, there being no cross-examination, the said witness is excused.

Attorney Lavine now presents evidence to the jury in support of the defendant's plea of once in jeopardy, reading the Indictment, No. 15,499-H Crim., and engrossed minutes pertaining thereto.

Lindscott Tyler, F.B.I. Agent, 4274 W. 1st. St., Los Angeles, California, is called, sworn, and testifies on direct examination by Attorney Lavine in support of defendant's plea of once in jeopardy.

At 12:11 P.M. court recesses until 2 P.M. At 2:05 P.M. court reconvenes herein and all being present as before, and the jury now being present, and counsel so stipulating, it is ordered to proceed.

Due to the absence of Witness Bradford, alias Beverlin, at 2:14 P.M. court recesses until 2:30 P.M. At 2:35 P.M. court reconvenes and all being present as before, including the jury, and counsel so stipulating, it is ordered to proceed.

Attorney Lavine moves for a continuance to hear further testimony of witness Beverlin and the said motion is denied pursuant to objection by Attorney Neukom. [15]

Attorney Lavine now moves to strike certain

testimony of Witnesses Marian Anderson, Joan Day, and Helen Merle Beverlin and the said motion is granted in part and denied in part.

Attorney Lavine moves to re-open the case for the purpose of hearing testimony of Witness Beverlin and the said motion is granted.

Helen Merle Beverlin resumes the stand and testifies on direct examination by Attorney Lavine in support of defendant's plea of once in jeopardy and on cross-examination by Attorney Neukom.

Counsel inform the Court that all witnesses may be permanently excused from further attendance herein and it is so ordered, and it is further ordered that the bond of Witnesses Beverlin be exonerated.

Attorney Lavine renews his motion for a directed verdict and the said motion is denied.

Attorney Neukom now moves the Court to strike all of testimony relative to defendant's plea of once in jeopardy and that it not be submitted to the jury and the said motion is denied.

At 3:50 P.M. court recesses. At 3:59 P.M. court reconvenes and all appearing as before, including the jury, and counsel so stipulating, it is ordered to proceed.

The Court now reads portions of the record and it is ordered that the said portions be stricken from the record and that the jury disregard the said portions.

Attorney Crawford makes opening argument to the jury in behalf of the Government.

At 4:40 P.M. the Court reminds the jury of the admonition heretofore given herein and orders that



further proceedings in this trial be, and they hereby are, continued to September 18, 1942, at 10 A.M. [16]

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In the District Court of the United States,  
Southern District of California, Central Division

No. 15,500-H-Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH DI MARZO,

Defendant.

VERDICT

We, the Jury in the above-entitled case, find the defendant, Joseph Di Marzo, Guilty as charged in the Indictment.

H. M. BURGESSON

Foreman of the Jury

Dated: Los Angeles, California, September 18, 1942.

[Endorsed]: Filed Sep 18 1942. [17]

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above-entitled case, find for the (Government) on said defendant's plea of once in jeopardy.

H. M. BURGESSON

Foreman of the Jury

Dated: Los Angeles, California, September 18, 1942.

[Endorsed]: Filed Sep 18 1942. [18]

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At a stated term, to-wit: The September Term, A. D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 28th day of September in the year of our Lord one thousand nine hundred and Forty-two.

Present: The Honorable Peirson M. Hall, District Judge.

No. 15,500-PH Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH DI MARZO,

Defendant.

ORDER DENYING MOTION FOR NEW  
TRIAL AND DENYING MOTION FOR  
ARREST OF JUDGMENT

This cause coming on for decision on motions of the defendant for a new trial and in an arrest of judgment, and for sentence of defendant Joseph Di Marzo; N. W. Neukom, Assistant U. S. Attorney, appearing as counsel for the Government; Morris Lavine, Esq., appearing as counsel for the said defendant, who is present; and Samuel Goldstein, Court Reporter, being present and reporting the testimony and the proceedings;

On motion of Attorney Lavine it is ordered that the Immigration Agent be called for an examination, and

Joseph P. Kettering is recalled to the stand and testifies on direct examination by Attorney Lavine in support of motion of defendant that the Court has no jurisdiction; on cross-examination by Attorney Neukom; on re-direct examination by Attorney Lavine; on examination by the Court; on re-cross-examination by Attorney Neukom; and on further re-direct examination by Attorney Lavine.

The Court reviews the various points made by the defendant in support of his motion for a new trial and denies the said motion, and also denies motion in an arrest of judgment.

Attorney Lavine makes a statement in mitigation of defendant, and Attorney Neukom making no recommendations either for or against the defendant, and the defendant interposing no objections to being sentenced, the Court now pronounces sentence upon the defendant as follows: \* \* \* [26]

District Court of the United States for the  
Southern District of California, Central Division

No. 15,500-PH-Criminal<sup>1</sup>

Indictment in one count for violation of U. S. C.,  
Title 18, Sec. 398

UNITED STATES OF AMERICA

v.

JOSEPH DI MARZO

### JUDGMENT AND COMMITMENT

On this 28th day of September, 1942, came the United States Attorney, and the defendant Joseph Di Marzo appearing in proper person, and by counsel, Morris Lavine, Esq.,<sup>2</sup> and,

The defendant having been convicted on<sup>3</sup> a verdict of the jury of the offense charged in the<sup>1</sup> Indictment in the above-entitled cause, to wit<sup>4</sup> transportation in interstate commerce of a certain woman with the intent and for the purpose of having said certain woman practice prostitution and debauchery and for other immoral purposes; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the<sup>5</sup>

penitentiary type to be designated by the Attorney General or his authorized representative for the period of<sup>6</sup> three (3) years, and in addition thereto pay a fine into the United States of America in the sum of \$1,000.00, and that said defendant be further imprisoned until payment of said fine, or until said defendant is otherwise discharged as provided by law.<sup>7</sup>

It Is Further Ordered that<sup>8</sup> the defendant be granted a five-day stay of execution of said sentence, the defendant remaining in the custody of the Immigration Department during said stay, and that at the expiration thereof the defendant be remanded to the custody of the United States Marshal for commitment.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.<sup>9</sup>

(Signed) PEIRSON M. HALL

United States District Judge.

A True Copy. Certified this .... day of .....

(Signed) .....

Clerk.

(By) .....

Deputy Clerk.

---

<sup>1</sup>Indictment or information. <sup>2</sup>Insert (a) "by counsel" or (b) "having been advised of his constitutional right to counsel and having been asked whether he desired counsel assigned by the Court, replied that he did not," whichever is applicable. <sup>3</sup>Insert the words "his plea of guilty," "plea of



nolo contendere," or "verdict of guilty," as the case may be. <sup>4</sup>Name specific offense or offenses and specify counts upon which convicted. <sup>5</sup>Insert type of institution such as "jail," "training school," "reformatory," "penitentiary," or "special." If prisoner's circumstances require special type institution, Marshall should submit facts and recommendations of Court to Attorney General where regulations do not apply. <sup>6</sup>Insert sentence and any provision for payment of fine and state whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is, with reference to termination of preceding term, or with respect to any other outstanding or unserved sentence. <sup>7</sup>Strike out if Court did not so order. <sup>8</sup>Indicate any order with respect to suspension and probation. <sup>9</sup>Certified copy to accompany defendant to institution.

[Endorsed]: Filed Sept. 28, 1942. [27]

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[Title of District Court and Cause.]

STATEMENT OF MATTERS UPON WHICH  
APPELLANT INTENDS TO RELY

Comes now the defendant and appellant, Joseph Di Marzo, and states that he will rely upon the evidence and record in the case as set forth in the bill of exceptions and the clerk's transcript, and all motions and points of law as set forth in each of the same, and upon the assignment of errors, and hereby adopts, as his respective points to be relied on in this appeal, all those set forth in the bill of exceptions and assignment of errors heretofore prepared and filed by him.

MORRIS LAVINE

Attorney for Defendant and  
Appellant.

Received copy of the within Statement of Matters upon which Appellant intends to rely, this 30th day of December, 1942.

LEO V. SILVERSTEIN

United States Attorney

[Endorsed]: Filed Dec. 30, 1942. [32]

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[Title of District Court and Cause.]

PRAECIPE

To the Clerk of the District Court of the United States, in and for the Southern District of California, Central Division:

You will please prepare the following record in the above-entitled cause for the Ninth Circuit Court of Appeals:

Clerk's Transcript as follows:

1. Indictment;
2. Minutes of July 29, 1942, relating to proceedings on arraignment and entry of plea, and rulings of the Court;
3. Objections of defendant Joseph Di Marzo to jurisdiction of the Court and affidavit of Joseph Di Marzo;
4. Minutes of August 8, 1942, relating to the hearing on objections of Joseph Di Marzo to jurisdiction of the Court, entry of plea, and rulings of the Court;
5. Minutes of September 9, 1942, relating to

proceedings on motion to quash and for continuance, and rulings of the Court;

6. Minutes of September 10, 1942, relating to proceedings and rulings on motion to quash and for a continuance;

7. Minutes of September 17, 1942, relating to proceedings and order in connection with the plea of once in jeopardy and motion for directed verdict and rulings thereon;

8. Verdicts of the jury;

9. Affidavit of Morris Lavine;

10. Objections to jurisdiction of the Court; [33]

11. Motion in arrest of judgment;

12. Motion for a new trial;

13. Minutes of September 28, 1942, relating to proceedings and rulings on motion for a new trial and motion in arrest of judgment and sentence of defendant;

14. Notice of appeal;

15. Affidavits and orders enlarging time within which to settle bill of exceptions;

16. Bill of exceptions;

17. This praecipe.

MORRIS LAVINE

Attorney for Defendant

Received copy of the within Praecipe this 30th day of December, 1942.

LEO V. SILVERSTEIN

United States Attorney

[Endorsed]: Filed Dec 30 1942. [34]



[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 34 inclusive contain full, true and correct copies of: Indictment; Minute Order Entered July 29, 1942; Objection to the Jurisdiction of the Court; Affidavit of Joseph Di Marzo; Minute Order entered August 8, 1942; Minute Order entered September 9, 1942; Minute Order entered September 10, 1942; Minute Order entered September 17, 1942; Verdict; Verdict on plea of Once in Jeopardy; Affidavit of Morris Lavine; Objections to the Jurisdiction of the Court; Motion in Arrest of Judgment; Motion for a New Trial; Minute Order entered September 28, 1942; Judgment and Commitment; Notice of Appeal; Order; Statement of Matters upon which Appellant Intends to Rely and Praecipe which, together with the original Assignment of Errors and Bill of Exceptions transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the fees of the clerk for comparing, correcting and certifying the foregoing record amount to \$12.50 which amount has been paid to me by appellant.

Witness my hand and the seal of the said District Court this 2 day of February, A. D. 1943.

[Seal]

EDMUND L. SMITH,

Clerk

By THEODORE HOCKE

Deputy Clerk

---

[Title of District Court and Cause.]

### ASSIGNMENT OF ERRORS

Comes now Joseph Di Marzo, the appellant in the above-entitled cause, and says that in the record and proceedings prior to and during the trial of said cause in the District Court of the United States, error has intervened to his prejudice, and makes the following assignment of errors which he avers occurred prior to and during the trial of the cause; said errors, and each of them, are to the great detriment, prejudice and injury of the defendant and in violation of the rights conferred upon him by law and by the Constitution of the United States. Said errors are as follows:

#### I.

The District Court erred in its opinion, decision and determination in overruling objections to the jurisdiction of the Court to try the defendant while he was an interned alien Italian.

Said trial was in violation of the treaties and statutes made and provided for such persons so situated. [1]

II.

The District Court erred in its decision, opinion and determination overruling objections to the jurisdiction of the Court.

III.

The District Court erred in its decision, opinion and determination of defendant's objection that his constitutional rights under the Fifth Amendment to the Constitution of the United States were violated.

IV.

The District Court erred in its decision, opinion and determination overruling the objection that the defendant was to be tried in violation of rights guaranteed to him under the Sixth Amendment to the Constitution of the United States, entitling him to the right of counsel and to be adequately prepared in the presentation of his defense.

V.

The District Court erred in overruling the objections to the matter of selecting the grand jury, and in holding that such grand jury was constituted in accordance with the practice of the State of California, when women were excluded therefrom.

VI.

The District Court erred in overruling objections to the formation of the petit jury on the ground that women were excluded therefrom in this case.

## VII.

The District Court erred in holding that the defendant was not formerly acquitted and was not once in jeopardy in this case by reason of the acquittal of Helen Merle Beverlin.

## VIII.

The District Court erred in its decision and determination that the defendant was not a prisoner of war, subject to the provisions of the Hague Treaty, and in holding that the District Court was not bound by such provisions.

## IX.

The District Court erred in holding that the defendant, constantly accompanied in the courtroom by an armed, uniformed guard of the Immigration Service, was or could be granted a fair and impartial trial under such circumstances, as guaranteed by the Fifth Amendment to the Constitution of the United States.

## X.

The District Court erred in holding private communication with the jury while they were deliberating on the cause and in the absence of defendant and his counsel.

## XI.

The District Court erred in failing to direct the verdict in favor of defendant both on the plea of not guilty and the plea of once in jeopardy. [3]

## XII.

The verdict was contrary to the law and the evidence. The evidence was insufficient to support the verdict. The District Court erred in failing to direct a verdict of not guilty on these grounds.

## XIII.

The District Court erred in submitting the facts to the jury and advising the jury to find for the Government on the plea of once in jeopardy. The District Court invaded the province of the jury.

## XIV.

The District Court erred in the admission and exclusion of evidence throughout the trial of the case, to which exceptions were duly taken and noted, and particularly erred in the admission of testimony of other alleged acts and offenses by the defendant not within the allegations contained in the indictment.

## XV.

The District Court erred in permitting examination by Government counsel of Emanuel Bernard Rosegarten. (Typewritten transcript pp. 68-85, incorporated herein by reference.)

## XVI.

The prosecutor was guilty of prejudicial misconduct in his examination of Emanuel Bernard Rosegarten in the manner of cross-examination. [4]

## XVII.

The District Court erred in excluding as evi-

dence the contents of the statement allegedly taken from the wife of Emanuel Bernard Rosegarten by a Government agent. (Typewritten transcript pp. 84, 85, incorporated herein by reference.)

### XVIII.

The District Court erred in overruling the objections to the testimony of Joan Day. (Typewritten transcript pp. 87-89, incorporated herein by reference.)

### XIX.

The District Court erred in the admission of testimony of David Goodsell. (Typewritten transcript, pp. 97-99, incorporated herein by reference.)

### XX.

The District Court erred in admitting testimony of Helen Merle Beverlin regarding acts and transactions other than the one alleged in the indictment, particularly that in the typewritten transcript pp. 104, et seq., incorporated herein by reference.

### XXI.

The District Court erred in the admission of transactions with reference to giving other girls money for any purpose, not alleged in the indictment. (Typewritten transcript pp. 119-122, incorporated herein by reference.) [5]

### XXII.

The District Court erred in the admission in evidence, over objections, of the testimony of Joan



Day. (Typewritten transcript pp. 123-125, incorporated herein by reference.)

XXIII.

The District Court erred in the admission in evidence, over objections, of the testimony of Helen Merle Beverlin regarding Viola or Diane Stevens. (Typewritten transcript, pp. 125 et seq., incorporated herein by reference.)

XXIV.

The District Court erred in excluding the testimony of Helen Merle Beverlin on the Government's objections, on the cross-examination of Helen Merle Beverlin. (Typewritten transcript pp. 142-144, incorporated herein by reference.)

XXV.

The District Court erred in admitting the testimony of Helen Merle Beverlin with relation to any other matters or trips. (Typewritten transcript pp. 153-160, incorporated herein by reference.)

XXVI.

The District Court erred in restricting argument on the subject of the defendant's restraint as an alien.

XXVII.

The District Court erred in refusing instructions commencing with defendant's Instruction No. A on page 352 and ending on page 368 of the typewritten transcript, incor- [6] porated herein by reference.

## XXVIII.

The District Court erred in giving an instruction: "I conclude and instruct you that as a matter of law the offense charged in case No. 15499, the other case, is and was not the same as the offense charged against the defendant in this case. (Page 276, typewritten transcript.)

## XXVIX

The District Court erred in instructing the jury beyond the words "any person who shall knowingly transport or cause to be transported . . . in interstate or foreign commerce or in any territory," as set out on page 281 of the typewritten transcript, all other portions not being alleged in the indictment.

## XXX.

The District Court erred in instructing the jury: "The woman transported is not an accomplice to her transportation whether she goes willingly or unwillingly and her testimony may be viewed in the same light that any other witness' would be viewed and need not be corroborated if you are willing to believe it alone and without corroboration." (Page 284, typewritten transcript.)

## XXXI.

The District Court erred in giving the following instruction:

"It is sufficient to warrant a verdict of guilt if [7] you are convinced beyond a reasonable doubt from the evidence before you that the defendant



knowingly induced, persuaded, aided, abetted, or caused this woman to go from Los Angeles to Honolulu with the intent and purpose on the part of the defendant that she would engage in prostitution or debauchery, or any other immoral purpose, or that he aided or assisted in knowingly persuading, inducing, or enticing her and that he thereby knowingly caused or aided or assisted in causing this somen to be carried as a passenger on a common carrier in interstate commerce, that is to say, upon a steamship sailing from the Port of Los Angeles to the City of Honolulu, Territory of Hawaii. Whether or not the woman went as is charged, if you find she so did, with or without her consent, is immaterial." (Page 285, typewritten transcript.)

### XXXII.

The District Court erred in giving the following instruction:

"The defendant may be found guilty of the offense charged in the indictment even though he in fact did not directly purchase her steamer ticket, and even though the money which was actually used was not the money that he provided, for the law does not require that the woman who is transported in interstate commerce for immoral purposes must use the identical money that is received from the defendant. It is sufficient if he aided or abetted in any [8] wise the woman in connection with her transportation from Los Angeles to the Territory of Hawaii with the intent upon his part that the purpose of this transportation was to have

Helen Merle Beverlin engage in prostitution. And this is true even though in fact the woman so transported did not actually engage in prostitution when she arrived at the destination." (Page 285, 286, typewritten transcript.)

### XXXIII.

The District Court erred in instructing the jury as follows:

"You are instructed that there is no excuse or defense to the defendant on trial in this case that others are not on trial, or possibly have not been indicted, even though you may believe that others were implicated in the charge now before you. You are to consider the guilt or innocence of the defendant Di Marzo without regard to the culpability, or lack of culpability of others not on trial, or possibly as to others who may not have been indicted." (Page 290, typewritten transcript.)

### XXXIV.

The District Court erred in its instructions as to "aiding and abetting," without any allegation in the indictment.

MORRIS LAVINE,

Attorney for Defendant and  
Appellant.

Received copy of the within Assignment of Errors this 30th day of December, 1942.

LEO V. SILVERSTEIN,  
United States Attorney.

By .....  
Ass't. United States Attorney.

[Endorsed]: Filed Dec. 30, 1942. Edmund L. Smith, Clerk. By Irwin B. James, Deputy Clerk.

[Endorsed]: Filed Feb. 3, 1943. Paul P. O'Brien, Clerk. [9]

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[Title of District Court and Cause.]

BILL OF EXCEPTIONS  
NOTICE OF HEARING

To Leo Silverstein, Acting United States Attorney,  
and Norman W. Neukom, Assistant United  
States Attorney:

Please Take Notice that the within Bill of Exceptions of the defendant and appellant, Joseph Di Marzo, will be brought on for settlement before the Honorable Peirson M. Hall, District Judge, in his court room, on January 25, 1943, at the hour of 10 A. M., or as soon thereafter as said matter can be heard.

Dated: December 30, 1942.

MORRIS LAVINE,  
Attorney for Defendant and  
Appellant.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Name and address of appellant:

Joseph Di Marzo, Tuna Canyon Detention Station, Tujunga, California.

Name and address of appellant's attorney:

Morris Lavine, 620 Bartlett Bldg., Los Angeles, California.

Offense:

Violation of Mann Act, Section 398, Title 18, U. S. Codes, to-wit: transporting and causing to be transported one Helen Merle Beverlin to Honolulu, Territory of Hawaii.

Date of Judgment:

September 28, 1942.

Brief description of judgment or sentence:

Three years in a federal type of penitentiary and \$1,000 fine.

Appellant is confined.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below.

Pursuant to Rule 5 I hereby serve notice that I elect to enter upon the service of my sentence pending appeal.

Dated: October 1, 1942.

JOSEPH DI MARZO,

Appellant.

MORRIS LAVINE,

Attorney for Appellant.

Grounds of Appeal:

1. The Court was without jurisdiction to try the defendant by reason of certain treaties between the United States and the Government of Italy, and by reason of his detention under a Presidential Order.

2. The defendant was denied due process of law guaranteed by the Fifth Amendment to the Constitution of the United States.

3. The defendant was denied the equal protection of the laws guaranteed by the Fifth Amendment to the Constitution of the United States.

4. The defendant was denied the right of counsel and adequate and effective right of preparation guaranteed by the Sixth Amendment to the Constitution of the United States.

5. The defendant was once in jeopardy by reason of the acquittal of Helen Merle Beverlin.

6. The Court erred in advising the jury to find against the appellant on the plea of once in jeopardy.

7. The Court erred in failing to direct the verdict in favor of the appellant.

8. The evidence was insufficient to support the verdict of guilty and was sufficient to sustain the defendant's plea of once in jeopardy.

9. The Court erred in various instructions given and refused.

10. The Court erred in its decision that Helen Merle. (Incomplete).

11. The Court erred in the admission of testimony of other acts and transactions not properly admissible under the case at bar.

12. The Court erred in its rulings on the admission and exclusion of testimony throughout the trial of the case.

13. The Court conducted the proceedings in the absence of defendant, in violation of the Fifth Amendment to the Constitution of the United States.

14. There was a communication between the Court and the jurors unauthorized by law.

15. The Court erred in refusing to send instructions to the jury upon its request.

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## INDICTMENT

No. 15,500

Filed Jul. 1, 1942

Viol: Section 398, Title 18, United States Code.

In the District Court of the United States in and for the Southern District of California, Central Division.

At a stated term of said court, begun and holden at the City of Los Angeles, County of Los Angeles, within and for the Central Division of the Southern District of California, on the first Monday of February in the year of our Lord one thousand nine hundred forty-two;

The grand jurors for the United States of America, impaneled and sworn in the Central Division of the Southern District of California, and inquiring for the Southern District of California, upon their oaths, present:

That

JOSEPH DI MARZO

hereinafter called the defendant, whose full and



true name, other than as herein stated, is to the grand jurors unknown, late of the Central Division of the Southern District of California, heretofore, to-wit, on or about January 24, 1941, did knowingly, wilfully, unlawfully and feloniously transport and cause to be transported in interstate commerce a certain woman, to-wit, one Helen Merle Beverlin, also known as Judy Bradford, from the City of Los Angeles, County of Los Angeles, state, division and district aforesaid, and in the jurisdiction of the United States and of this Honorable Court, to the City of Honolulu, Territory of Hawaii, with the intent on the part of him, the said defendant, and for the purpose of having said Helen Merle Beverlin, also known as Judy Bradford, practice prostitution and debauchery and for other immoral purposes;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

WM. FLEET PALMER,

United States Attorney.

A true bill,

-----  
Foreman.

[Endorsed]: Filed Jul. 1, 1942.



Los Angeles,  
Wednesday, July 29, 1942

Hollzer  
No. 15,500-Crim.

[Title of Cause.]

### ORDER FOR CONTINUANCE

This cause coming on for arraignment and plea of defendant Joseph Di Marzo; R. E. Lazarus, Assistant U. S. Attorney, appearing as counsel for the said defendant, who is present in custody; and C. W. McClain, Court Reporter, being present and reporting the testimony and proceedings:

The defendant states his true name is as set forth in the Indictment, waives reading thereof, and pleads not guilty.

It is ordered that the cause be, and it hereby is, continued to July 30, 1942, at 10 A.M., for setting.

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Los Angeles  
Monday, August 3, 1942

Hollzer  
No. 15,500-Crim.

[Title of Cause.]

### ORDER PLACING CAUSE ON CALENDAR FOR SETTING FOR TRIAL

This cause coming on for setting for trial of defendant Joseph Di Marzo; R. E. Lazarus, Assistant U. S. Attorney, appearing as counsel for the Government; Morris Lavine, Esq., appearing

as counsel for the said defendant, who is present in custody; and R. T. Doidge, Court Reporter, being present and reporting the proceedings.

Attorney Lavine moves that the Court determine that it has no jurisdiction and states the grounds for the said motion.

The Court orders that any motions be made in writing with supporting authorities and be filed by August 4, 1942, and that the cause be placed on the calendar of August 7, 1942 at 2 P.M., for setting for trial.

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No. 15499

No. 15500

[Title of District Court and Cause.]

OBJECTIONS TO THE JURISDICTION  
OF THE COURT.

Comes now Joseph Di Marzo and objects to the jurisdiction of the Court to try him in the District Court of the United States, Southern District of California, Central Division, on the above entitled indictment on the ground that a civil court is without jurisdiction to try the said De Marzo who is being held as an interned enemy alien prisoner of war at the Tuna Canyon *Canyon* Detention Station, Tujunga, California, and as grounds of his objection specifies as follows:

I.

The Treaty of the Hague relating to the treatment of prisoners of war (U. S. Treaty Series No.

846) signed at Geneva July 27, 1929; in force July 19, 1931; ratified by the following nations, is the supreme law of the land: Australia, Belgium, Brazil, Denmark, Great Britain and Northern Ireland, India, Italy, Latvia, Mexico, New Zealand, Norway, Poland, Portugal, Roumania, Spain, Sweden, Switzerland, Union of South Africa, United States of America and Yugoslavia.

This Treaty provides in Article 63 as follows:

“Sentence may be pronounced against a prisoner of war only by the same courts and according to the same procedure as in the case of persons belonging to the armed forces of the detaining power.”

Article 75 of said Treaty provides:

“When belligerents conclude a convention of armistice \* \* \* \*

“Prisoners of war against whom a penal prosecution might be pending for a crime or offense of municipal law may, however, be detained until the end of the proceedings and if necessary until the expiration of the punishment.”

Pursuant to the Treaty of the Hague signed at Geneva July 27, 1929, ratified by the Senate of the United States January 7, 1932 and by the President of the United States on January 16, 1932, deposited with the Government of Switzerland February 24, 1932, and proclaimed by the President of the United States August 4, 1932, which contains covenants for the treatment of prisoners of war, it is implicit in said covenants by reason of Article 75 of said Treaty that a prisoner of war against whom a penal prosecution

might be pending for a crime or offense against municipal law may be detained for prosecution after an armistice and until the end of proceedings or until the expiration of the punishment for this violation, but may not be prosecuted and removed from such detention as a prisoner of war while he is subject for the purpose of prosecution, under local law.

The Treaty is the supreme law of the land.

United States Constitution, Article VI

It supercedes all local laws inconsistant with its terms.

Hauenstein v. Lynham, 100 U.S. 483, 25  
L.Ed. 628

Geofroy v. Riggs, 133 U.S. 258, 33 L.Ed.  
642

Chirac v. Chirac, 2 Wheat. 259, 4 L.Ed.  
234

Kull v. Kull, 37 Hun, 476

Treaties which regulate the conduct of prisoners between nations during time of war survive after the outbreak of war.

Hall International Law, p. 398, 401

2 Westlake International Law, p. 34

The Magna Charta provides:

“If in time of war merchants of the country at war with us shall be found in our country at the outbreak of war, they shall be attached with the damage to their business or their goods until it is known to us or to our Chief just how merchants of our country who are then found in the country at war with us are treated; and if ours

are safe there, the others shall be safe in our country.”

2 Westlake International Law, p. 44

2 Holdsworth History of English Law,  
p. 393

The Statute of Staples, 27 Edw. 3, p. 1354

The question observed in international law pursuant to the treaty of the parties is political in that it seeks to secure for nationals of one country the same treatment as is secured to nationals of the other country in the United States.

A holding by the courts of this country, that they may remove an enemy alien from a concentration camp for trial, would set a precedent for other countries to do likewise.

In 1940 the regulations of the United States War Department stated:

“Every person captured or interned by a belligerent power because of war is, during the captivity or internment, a prisoner of war, and is entitled to be recognized as such under the law of war.”

(United States War Department Mobilization Regulations No. 1 to 11 (1 April 1940) page 3.)

In the case of *Arce v. Texas*, L.R.A. 1918 E, p. 358, the Texas Court of Criminal Appeals held that the civil courts of Texas have no jurisdiction to try and punish Mexicans who have invaded the United States in the prosecution of war.

## II.

A trial of Di Marzo while he is an interned enemy alien would deprive him of a fair and im-



partial trial, and would try him in an atmosphere of passion and prejudice, such as is forbidden by the provisions of the Fifth Amendment to the Constitution of the United States, guaranteeing to all persons due process of law.

The element of fair trial is guaranteed by due process of law.

Lisenba v. California, 86 L.Ed. 179

Mooney v. Holohan, 294 U.S. 103, 79 L.Ed. 791 98 A. L. R. 406

Chambers v. Florida, 309 U.S. 227, 84 L.Ed. 716

Brown v. Mississippi, 297 U.S. 278, 80 L.Ed. 682

Frank v. Mangum (trial dominated by mob) 237 U.S. 309, 59 L.Ed. 969

Every person is entitled to have a fair and impartial trial by an impartial jury, uninfluenced by passion and prejudice and uninfluenced by any other consideration than the evidence produced at the trial.

United States v. Socony Vacuum Oil Co.,  
310 U.S. 150, 239, 84 L.Ed. 1176, 1177,  
Headnote 30

Betts v. Brady, 86 L.Ed. 1120

Randle v. State, 34 Tex. Crim. Rep. 45,  
28 S.W. 953

Coffman v. State, 62 Tex. Crim. Rep. 88,  
136 S.W. 779

Richmond v. State, 16 Neb. 388, 20 N.W.  
282



Streight v. State, 62 Tex. Crim. Rep. 453,  
138 S.W. 742

Meyers v. State, 39 Tex. Crim. Rep. 500,  
46 S.W. 817

Barnes v. State, ..... Tex. Crim. Rep. ....,  
59 S.W. 882 14 Am. Crim. Rep. 229

Alaroon v. State, 47 Tex. Crim. Rep. 415,  
83 S.W. 1116

Gallaher v. State, 40 Tex. Crim. Rep. 296,  
50 S.W. 393 11 Am. Crim. Rep. 207

Dobbs v. State, 51 Tex. Crim. Rep. 629,  
102 S.W. 918

Powell v. Alabama, 287 U.S. 45, 77 L.Ed.  
158

### III.

Defendant Di Marzo further objects on the ground that a trial at this time would deny him the equal protection of the laws guaranteed by the Fifth Amendment to the Constitution of the United States in that it places him in a different category than persons similarly situated, and places him in a position where he cannot get the same equal justice as persons who are not under the cloud of being detained, interned enemy alien.

Hysler v. Florida, 62 L.Ed. 688, 694

Yick Wo v. Hopkins, 30 L.Ed. 220

Truax v. Raich, 239 U.S. 33, 60 L.Ed. 131

Barbier v. Connolly, 28 L.Ed. 923

Moore v. Dempsey, 261 U.S. 86, 67 L.Ed.  
543

Neal v. Delaware, 103 U.S. 370, 26 L.Ed.  
567

Frank v. Mangum, 237 U.S. 309, 59 L.Ed. 909

Truax v. Corrigan, 66 L.Ed. 254, 263

#### IV.

Defendant Di Marzo further objects that a trial at this time would deprive him of right guaranteed under the Sixth Amendment to the Constitution of the United States in that this section entitles a person to the right of private consultation and conference with counsel whenever and wherever he desires. Defendant is interned in a concentration camp approximately fifteen miles from Los Angeles, has no access to a telephone or privacy of conference with counsel or of preparation, as all conferences with his counsel are held in the shadow of an immigration officer, always present. The right of effective aid of counsel include the right to effective preparation for trial.

Powell v. Alabama, 287 U.S. 45, 77 L.Ed. 158

Johnson v. Zerbst, 304 U.S. 458

Betts v. Brady, 86 L.Ed. 1117 and cases there cited.

Chin Yow v. United States, 208 U.S. 7, 52 L.Ed. 369

Ex parte Chin Loy You, 223 Fed. 833

Wherefore, Joseph Di Marzo objects to the jurisdiction of the Court to try him on the grounds that he is now interned as an enemy alien and any trial of him at this time and under the present conditions would be in violation of the treaties of the United

States, the Constitution of the United States, and the laws made and provided therefor.

Respectfully submitted,

MORRIS LAVINE

Attorney for Defendant

Joseph Di Marzo

Received copy of the within this 5 day of  
Aug 1942.

R. E. LAZARUS

Attorney for U. S.

[Endorsed]: Filed Aug 7 1942.

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Tuna Canyon Detention Station,  
Tujunga, California

### AFFIDAVIT OF JOSEPH DI MARZO

State of California

County of Los Angeles—ss.

I, Joseph Di Marzo, being first duly sworn, depose and say:

That I am at present interned at the Tuna Canyon Detention Station, Tujunga, California, as an enemy alien prisoner of war, and that my assets are frozen in the Bank of America, 12th and K Streets, Sacramento, California, and I am without ready funds, until such funds are released, to pay my counsel and for costs of court until my box and my bank account in this bank are unfrozen or power is given to someone to secure the same.

I am at all times detained in the Tuna Canyon

Detention Station, Tujunga, California, and have no way of locating witnesses myself or their addresses. I cannot use the telephone except to call my attorney, collect, and no persons can visit me in private. My attorney is allowed to talk to me at the internment camp but within the view of an immigration officer and facilities are such as to make privacy at the camp impossible.

I aver that due to my status as an enemy alien, I am clothed with an atmosphere of prejudice and hostility and that I cannot receive a fair and impartial trial by reason of that fact alone.

I further aver that I am unable to prepare my defense properly while interned in camp as I cannot myself locate witnesses whose whereabouts I alone may be able to discover and further, it may be necessary to locate a witness who is in Honolulu, Hawaii, for the purpose of taking a deposition or securing the return of said witness for my trial. Such funds as I have to enable me to do these things are now frozen.

JOSEPH DI MARZO

Subscribed and sworn to before me this 3rd day of August, 1942.

ZOA L. ZACCHE

Notary Public in and for the County of Los Angeles, State of California.

Received copy of the within this Aug 5/42.

R. E. LAZARUS

Attorney for U. S.

Saturday, August 8, 1942

Ling

Los Angeles

No. 15,500-Crim.

[Title of Cause.]

HEARING ON OBJECTIONS  
OF DEFENDANT

This cause coming on for hearing objections of defendant to jurisdiction of this Court and for plea:

N. W. Neukom, Assistant U. S. Attorney, appearing as counsel for the Government; Morris Lavine, Esq., appearing as counsel for the defendant, Joseph Di Marzo, who is present and in custody, and Mack Racklin, Court Reporter, being present and reporting the proceedings:

Attorney Lavine makes opening statement in behalf of defendant's objections to jurisdiction of this Court, reviewing proceedings antedating the present matter.

Attorney Neukom makes a statement that the defendant is not a prisoner of war but is being merely detained in a detention camp to answer the charge contained in the Indictment.

Attorney Lavine argues further, claiming the defendant is a prisoner of war, and cites authorities in support thereof, and that, therefore, this Court does not have jurisdiction in this case.

Attorney Neukom states his office has written for authority to dismiss Case No. 15-499-Crim.

Attorney Lavine now argues in support of motion of the defendant for Judgment of Acquittal.

Attorney Neukom argues in opposition to said



motion for a Judgment of Acquittal inasmuch as Case No. 15-499-Crim. will be dismissed on authority of the U. S. Attorney General.

Objections and motion for Judgment of Acquittal are ordered overruled, to which counsel for the defendant notes an exception.

And, the defendant being now called before the Court for entry of plea, and upon being asked to enter his plea, pleads not guilty in Case No. 15-500-Crim., it is ordered that Case No. 15,500-Crim. be, and it hereby is, set for trial before Judge Hall on September 9, 1942.

Attorney Lavine also enters a plea of once in jeopardy in behalf of the defendant in Case No. 15,499-Crim., and thereupon moves the Court for an order allowing counsel to interview the defendant without restrictions now in force in the detention camp where the defendant is confined; whereupon, Attorney Neukom assured the Court and counsel that the camp will be specially instructed to allow counsel for the defendant and the defendant to prepare for trial without the imposition of the usual restrictions of said camp, but that the defendant can not be taken to the office of his attorney. Therefore, the Court makes no ruling thereon.

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At a stated term, to-wit: The February Term, A D 1942.

Of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles



on Saturday the 8th day of August in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable: Dave W. Ling, District Judge.

No. 15,499-Crim.

[Title of Cause.]

This cause coming on for hearing (1) objections of defendant to jurisdiction of this Court, and (2) motion of defendant for Judgment of Acquittal  
and

No. 15500-H Crim.

[Title of Cause.]

This cause coming on for hearing objections of defendant to jurisdiction of this Court and for plea:

N. W. Neukom, Assistant U. S. Attorney, appearing as counsel for the Government; Morris Lavine, Esq., appearing as counsel for the defendant, Joseph Di Marzo, who is present in custody; and Mack Racklin, Court Reporter, being present and reporting the proceedings:

Attorney Lavine makes opening statement in behalf of defendant's objections to jurisdiction of this Court, reviewing proceedings antedating the present matter.

Attorney Neukom makes a statement that the defendant is not a prisoner of war but is being merely detained in a detention camp to answer the charge contained in the Indictment.

Attorney Lavine argues further, claiming the defendant is a prisoner of war, and cites authori-

ties in support thereof, and that, therefore, this Court does not have jurisdiction in this case.

Attorney Neukom states his office has written for authority to dismiss Case No. 15,499-Crim.

Attorney Lavine now argues in support of motion of the defendant for Judgment of Acquittal.

Attorney Neukom now argues in opposition to said motion for a Judgment of Acquittal inasmuch as Case No. 15,499-Crim. will be dismissed on authority of the U. S. Attorney General.

Objections and motion for Judgment of Acquittal are ordered overruled, to which counsel for the defendant notes an exception.

And, the defendant being now called before the Court for entry of plea, and upon being asked to enter his plea, pleads not guilty in Case No. 15,500-Crim., it is ordered that Case No. 15,500-Crim. be, and it hereby is, set for trial before Judge Hall on September 9, 1942.

Attorney Lavine also enters a plea of once in jeopardy in behalf of the defendant in Case No. 15,499-Crim., and thereupon moves the Court for an order allowing counsel to interview the defendant without restrictions now in force in the detention camp where the defendant is confined; whereupon, Attorney Neukom assured the Court and counsel that the camp will be specifically instructed to allow counsel for the defendant and the defendant to prepare for trial without the imposition of the usual restrictions of said camp, but that the defendant can not be taken to the office of his attorney. Thereupon, the Court makes no ruling thereon.

No. 15500

[Title of District Court and Cause.]

OBJECTION TO THE JURISDICTION  
OF THE COURT.

Comes now Joseph Di Marzo and objects to the jurisdiction of the Court to pronounce judgment against him on the ground that said trial and procedure is in violation of the treaties and Constitution of the United States and statutes made and provided in his case.

Dated: September 21, 1942.

MORRIS LAVINE per C. B. H.  
Attorney for Defendant.

Received copy of the within.....this 21st day  
of September, 1942.

LEO V. SILVERSTEIN,  
U. S. Attorney,  
Attorney for Plaintiff.

M.

[Endorsed]: Filed Sept. 21, 1942.

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No. 15500

[Title of District Court and Cause.]

## MOTION IN ARREST OF JUDGMENT

Comes now the defendant and moves in arrest of judgment that the Court was and is without jurisdiction to try him or to pronounce judgment against him in this case.

Said motion is based upon all the records and files, and statutes and decisions heretofore filed in said case.

Dated: September 21, 1942.

MORRIS LAVINE,  
Attorney for Defendant.

Received copy of the within.....this 21st day of  
September, 1942.

LEO V. SILVERSTEIN,  
U. S. Attorney,  
Attorney for Plaintiff.

HKM

[Endorsed]: Filed Sep. 21, 1942.

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No. 15,500

[Title of District Court and Cause.]

### MOTION FOR A NEW TRIAL

Comes now the defendant, Joseph Di Marzo, and moves for a new trial on the following grounds:

#### I

The Court erred in holding private communications with the jury while they were deliberating on the cause.

#### II

The Court erred in refusing to send the written instructions to the jury, at their request, while they were deliberating on the cause.

## III

The Court erred in holding the trial in the absence of the defendant and his counsel.

## IV

The Court erred in rulings made throughout the trial of the case.

## V

The verdict is contrary to the laws and the evidence. The evidence is insufficient to support the verdict.

## VI

The Court erred in its rulings and decisions throughout the trial and proceedings in the case.

## VII

The procedure and proceedings in the case violated the Fifth Amendment to the Constitution of the United States, entitling a defendant to due process of law and the equal protection of the laws.

## VIII

The Court was without jurisdiction to proceed with the trial of the case.

## IX

The trial was had in violation of the treaties and Constitution of the United States.

Dated: September 21, 1942.

MORRIS LAVINE,

Attorney for Defendant.

POINTS AND AUTHORITIES

In federal courts, except in matters governed by the federal Constitution or by acts of Congress, law to be applied in any case is the law of the state.

*Erie R. Co. v. Tompkins*, 58 S. Ct. 817, 114 ALR 1487

Section 1137 of the Penal Code of California provides that the jury may take the written instructions to the jury room where the jury asked for the instructions. It is the right of the prosecution or the defense to have the instructions sent to the jury when the jury requests it.

*People v. Cochran*, 61 Cal. 548, 554

*People v. Dunlop*, 27 Cal. App. 460, 470

Any conduct with relation to the jury which is apt to influence the jurors or which pertains to their deliberations, is reversible error.

*Brasfield v. United States*, 71 L. Ed. 345

The Court erred in thus holding the trial in the absence of the defendant and his counsel. Such conduct constitutes reversible error.

Fifth Amendment, Constitution of the United States

*Yick Wo v. Hopkins*, 30 L. Ed 220

*Hysler v. Florida*, 62 S. Ct. 688

*Clyatt v. United States*, 59 L. Ed 732

Defendant, due to his status as an interned alien could not be fairly tried.

*Lisenba v. California*, 86 L. Ed. 179



There was no evidence of transportation or causing transportation as those words are defined in the statute.

Received copy of the within Motion for New Trial  
this 21 day of September, 1942

LEO V. SILVERSTEIN,

United States Attorney

By HKM,

Attorney for Plaintiff

[Endorsed]: Filed Sep. 21, 1942.

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No. 15500

[Title of District Court and Cause.]

AFFIDAVIT OF MORRIS LAVINE

State of California,

County of Los Angeles—ss.

Morris Lavine, being first duly sworn deposes and says.

That he is the attorney for the above-named defendant, Joseph Di Marzo; that the jury in the above case was sent out to deliberate in the case on September 18, 1942, and affiant is informed and believes that after the jury retired to deliberate there was a private communication from the jury to the Judge presiding in the trial of the case, asking the Judge to send in the written instructions which has been read to them by the Court; that the Court had read numerous instructions to the jury, all of them being

in writing, relating to the question of guilty or not guilty and to the question of once in jeopardy; that affiant is informed and believes that the Court then privately communicated to the jury that he would not send in the instructions to them, and that the written instructions were not sent in to them; that the Court did not reconvene court and call the jury in, nor was the defendant or his counsel present at any time during the interchange of communications thus privately made between the jury and the Court.

MORRIS LAVINE.

Subscribed and sworn to before me this 21st day of Sept., 1942.

-----,  
J. F. MORONEY,

County Clerk.

By N. HOLLISTER,

Deputy.

Received copy of the within.....this 21st day of September, 1942.

LEO V. SILVERSTEIN,

U. S. Attorney.

HKM,

Attorney for Plaintiff.

[Endorsed]: Filed Sep. 21, 1942.

## TESTIMONY.

Mr. Neukum: I would like to move for a dismissal of the action in Case 15,499 pursuant to the authority of the Attorney General.

Mr. Lavine: We object to the motion for dismissal and we ask the Court to enter a judgment of acquittal, and I would like to be heard on that, your Honor. There has been a trial as to one defendant, a co-defendant, a conspiracy charge, and the co-defendant has been acquitted. Therefore, it is my contention that the acquittal of a co-defendant necessarily acquite the other defendant on a charge of conspiracy.

The Court: Well, I think I will grant the motion, and postpone to such other time, any other motions you have had to make in connection with the matter.

Case 15,499 Criminal will be dismissed.

Mr. Lavine: May the record now show affirmatively that the defendant answers that he is not ready for trial by reason of the objections and motions heretofore made and which he further intends to present at length after the impanelment of the jury, and the argument, and also that we wish to present the additional ground that the indictment is null and void because it was not returned by a Grand Jury of the Federal Court constituted in accordance with the procedure as set up for the proper impanelment of Grand Juries. That is an additional matter I intended to present.

The Court: Your first motion is a motion for a continuance?

Mr. Lavine: That is correct.

The Court: And your second motion is a motion to quash?

Mr. Lavine: That is right. My first motion for a continuance is based on the fact that the defendant has not been able to adequately prepare for trial by reason of the situation in which he is personally confronted; that he has been denied the effective right of counsel, and denied, under this amendment to the Constitution of the United States that he has not had the opportunity and has been discriminated against and treated differently than other persons in a like situation should be treated. It is a situation in which he finds himself through no fault of his own, and for that reason my first motion is addressed to a continuance until both he and his counsel may receive proper relief under the premises, and for a period of at least 30 or 60 days.

(Roll call of jurors made by the clerk and the jurors are excused until 11:05 A. M.)

Mr. Lavine: Your Honor, there are certain matters that might be presented either by way of testimony or by way of stipulation as to somethings, I believe, since the last hearing in this matter. But I think, first of all, I should acquaint your Honor with the proceedings that have gone heretofore, very briefly, and we can possibly stipulate to those [2\*] things as matters of fact.

\* Page numbering appearing at foot of page of Testimony in Bill of Exceptions.

The defendant, Mr. Joseph Di Marzo has been interned in the Tuna Canyon Detention Station at Tujunga, California. He was first taken in on April 7th at San Pedro Station and then was moved to the Tujunga Station on May 8th.

The Court: What is the first date?

Mr. Lavine: April 7, 1942, and then he was transferred to Tujunga Station on May 28th as an Italian alien, awaiting hearing before the Alien Enemy Board. I might point out that the indictment in this case was not returned until July 1, 1942, and while the defendant was actually in this detention station at Tujunga.

The Court: Was there ever a previous warrant? When was the warrant first issued? A complaint was filed. I see affidavits——

Mr. Neukom: The warrant was issued April 2nd. A complaint was filed at that time.

The Court: Is that a stipulated date, April 2, as the date of the complaint having been filed?

Mr. Lavine: Yes, I will so stipulate. The defendant was apprehended on this charge and was released on bond of \$2500. The defendant here was wanted and he came down and surrendered, on April 5th, and his bond was then fixed at \$2500. He secured his release on bond and thereafter a request was made for an increase of the bond and the bond was increased to \$10,000, and he did furnish the increased [3] bond.

The Court: That was after the indictment?

Mr. Lavine: That was on the complaint, your Honor.



Mr. Neukom: That is correct.

Mr. Lavine: And then he was released on bond to do whatever he wished to do. On April 6th he was released on bond.

The Court: He was placed in the detention camp as an alien enemy?

Mr. Lavine: That is right.

The Court: As a citizen of Italy, on April 7th?

Mr. Lavine: That is correct.

The Court: And has since and is now?

Mr. Lavine: Has since and is now detained there. At the first hearing that we had before Judge Hollzer, there was other counsel at that time, and I came into the case immediately thereafter, and found this situation to exist: the defendant, being at the Tujunga Station, was permitted to place a telephone call to me with reverse charges. I went out and saw him at the Tujunga Station. I saw the defendant on or about July 25th at the detention station at Tujunga. That was the first time, and there conferred with him at the detention station at Tujunga. I think it can be stipulated that that station is about 20 miles from here.

Mr. Neukom: I think so.

The Court: He did have other counsel in the meantime? [4]

Mr. Lavine: No, he had had other counsel who had gotten out of the case.

Mr. Neukom: George Stahlman represented him.

The Court: Until when?

Mr. Lavine: Well, he explained to the Court—he had withdrawn before that time, he had gotten



permission from the Court to be relieved, and the Court informed the defendant that he would have to make arrangements, if he could, for other counsel. Mr. Stahlman withdrew on the Monday preceding that, I believe, or at the previous session. I wasn't there but I talked to Mr. Stahlman about it.

The Court: So that the defendant had counsel from the date of his arrest?

The Defendant: I never saw the counsel only once.

The Court: Well, if he was counsel of record, he had counsel.

Mr. Lavine: He was represented by Mr. Stahlman, your Honor, who surrendered him, and he was counsel of record until the Court gave him permission to withdraw.

The Court: Would that be in the minutes here, Mr. Clerk, or in the file?

The Clerk: I should be. It states here, "It is ordered this case must proceed to a jury trial and relieving Attorney Stahlman as counsel for the defendant."

The Court: So Mr. Stahlman was representing the defendant until July 30th officially. [5]

Mr. Lavine: That is correct. And on July 30th I appeared before Judge Hollzer and explained the predicament in which both my client and I found ourselves. All of his then assets were frozen. He had assets with which to pay counsel but could not unfreeze them. He had assets with which to make a proper investigation, but couldn't use them. He

had assets to subpoena witnesses through the Marshall, but no funds were available. He had no assets to pay for a telephone, because they were frozen. He had no means to pay me even for the gasoline that I had to use to confer and consult with him.

Under the circumstances, we explained that situation and I entered objections to the trial proceeding, which the Judge suggested be made in writing. In the meantime, in order to facilitate a proper defense of this defendant, and in the discharge of my duties both as an officer of the Court and my duty to my client, we applied to the Federal Reserve Bank of San Francisco for a proper license for them to release funds which he had in a safety deposit box in Sacramento in the sum of \$1000.00 in cash.

Their answer was received, and in the meantime another situation developed in the course of my reading and studying of this matter that, under the "Trading with an Enemy Act" there appeared in the State Bar Journal of the State of California an article headed "Presidential License Required for a Lawyer to Represent Enemy Alien", and it was very [6] illuminating. That article was written by Carroll S. Butcher of the San Francisco Bar, who contends that, under that Act, a lawyer to represent an enemy alien had to be licensed. Now, I personally have my difference of opinion as to the interpretation of the Act, but still there is an able lawyer's interpretation of the Act, and there is the situation that confronted me personally.

As I say, I had no right to represent him without proper authority or without proper designation, and whether, even though I were to represent him, I could use any funds that he might have to pay my fee and even pay the necessary expenses which I might be put to in the proper defense of this matter.

At the suggestion of Mr. Neukom, I wrote to the Attorney General and have not, to this date, received a reply to my inquiry.

The Court: Do you have a copy of your letter?

Mr. Lavine: Yes.

The Court: We are taking all of these things more or less informally and if there is no challenge as to the veracity of the statement——

Mr. Neukom: No. I told Mr. Lavine about that Act, but I was very confident that it did not apply in this instance because only a few months before I had spoken to Marion Wright, whom I have a lot of respect for. He represented a great many Japanese, and he explained to me that he [7] had written to the Attorney General and the Attorney General's attitude is that that Act pertaining to attorneys applies only when they are actually representing various organizations or representing some enemy alien in connection with the actual trading, as the name of the Act implies. But to represent some individual who is an enemy of this country does not come within the purview of the Act. That is to be found in one of the recent supplements to the Code under "War" Title 50. It don't apply

to people entirely local. It is for the purpose of giving aid to corporations.

The Court: Well, anything that is National or International starts out being local, and I can well see that it might have been the intention of Congress to have required a license for lawyers, because it would be a very easy thing for a dangerous alien, who might be interned and who might have large assets, to carry on any nefarious act in the country by the release of money under the guise of counsel fees, even though it might be a release of money in a house lease or some very simple or legal matter. Well, I have to see the Act first.

Mr. Lavine: I have it right here. I think we have a copy right here. It is Title 50, Subsection 7; particularly "Trading with the Enemy Act." That was the old act of 1917.

The Court: Well, was there not an amendment to that act?

Mr. Neukom: Yes, there was a new one and I think the [8] effective date was about July 10th. It was passed as a complete act. It is a rather lengthy act.

The Court: Well, it would be rather an anomalous situation if the United States Government, acting through the United States Attorney General, could prosecute a man who came as an alien, and then, at the same time, the United States Government, acting through the Attorney General, could say, "We refuse, or we cannot grant a license to hire so and so as your Lawyer," on the other hand.

The Act of 1917, Mr. Neukom, is very broad and prohibits to trade or attempt to trade, and the definition of "to trade" is to have any form of business, or commercial communication or intercourse with, or enter into, carry on, complete or perform any contract, or contracts, or immediate obligation. The words, "Trading with the Enemy" would imply buying and selling. But as I pointed out, it could defeat the complete purpose of the Act if it did exclude the payment of fees to lawyers, because thereby large sums could be released to lawyers under the guise of professional representation, and where are you going to draw the line of professional representation, whether a man is accused criminally in the United States Courts, or in the State Courts, or in connection with a civil matter if he wants to consult with and pay a good lawyer in connection with a contract or an adoption or a guardianship proceeding, or some such matter?

Mr. Neukom: Well, your Honor, the reasoning would [9] follow in its logical sequence and would mean then that any enemy alien would be specifically immune from prosecution for any crime he had committed.

The Court: Only so long as he is detained, as I understand. In other words, when he is detained in custody.

Mr. Neukom: No, the Act applies to all aliens, all enemy aliens regardless, that is those who come within the commercial aspect of the Act. The Act provides a safeguard against such dealings which,



through the acts of individuals or corporations, might give aid to the enemy, and so that the government might have at all times knowledge as to these monies and so that they could not be utilized in the manner as you have explained and possibly could afford aid to the enemy. Now, a violation, that, of course, would not stop the trial of a case because, if it be a violation, it is a violation by the attorney to so represent a man. And Mr. Lavine, if his argument is tenable, has violated the act by appearing in court here on July 25th and on August 8th, and Mr. Lavine, I think, fully knows that he has violated the Act and that he is entirely immune from any prosecution and he certainly will not be confronted with any such proceeding.

The Court: If the Attorney General should, however, hold that a man must have a license, then Mr. Lavine will find himself in the position of having represented a man, not violating the law but to have represented him for nothing. [10] Of course, there has been no representation that the client is capable of doing that, or that he has assets which are sufficient to pay, or if he is willing to pay.

Mr. Lavine: I am coming to that part of the argument.

The Court: You have received no reply from the Attorney General?

Mr. Lavine: That is correct, and this is my letter to him.

The Court: Do you have a copy of the reply that was received in the similar case, Mr. Neukom?



Mr. Neukom: No, only in talking to Marion Wright. I asked him some time ago what the situation was, and he told me that he had received a letter from them but that the impression that he had gathered was that it only applied as I have tried to explain, that is in commercial ventures whereby a party who was actually representing, say, a person living in Italy and an attorney was representing him in the States whereby monies might be going over there, or representing some corporation which was entirely an enemy corporation, such as some of the Japanese corporations that formerly existed here. That is, most of the stock was held by a Japanese or Japanese enterprises, and instances such as that. That was his impression. I think, unless we have this Act, your Honor, that we are rather begging time, and I would like to try to find it for you and if we could have just a few minutes' recess, that could be obtained. [11]

The Court: Well, I believe we should have the jury come back here tomorrow morning because it will be five minutes after 11:00 before we know it. In connection with this matter, I think that the defendant here is entitled to counsel, and if he is entitled to counsel he is entitled to pay counsel and counsel is entitled to be paid, if he has the ability to pay him. And in that case, I think it would be most unjust if we should force the defendant to trial and force defendant's counsel to take a chance in defending these matters: No. 1, as to whether or

not he was committing a crime in violation of the law in so defending him; and No. 2, whether or not some governmental agency is ever going to grant a license or permit to pay him after he had rendered his services.

Mr. Neukom: Well, I think Mr. Lavine will tell you that he has had monies released to him and has been paid.

The Court: Have you had?

Mr. Lavine: I haven't used it. I had \$500 we took out of the box, but under questionable circumstances. That is, I should say, I went to the Federal Reserve Bank in San Francisco. That is what I was going to relate to your Honor. Only last Friday I had the defendant apply for a license to enter the box. Or rather, on August 3rd, through the Federal Reserve Bank, to enter the box and take money out for the purpose of paying me.

On August 8th, 1942, I personally wrote to Francis [12] Biddle, as follows: "I have been retained to represent Joseph Di Marzo in the District Court of the United States, Southern District of California, Central Division, who stands indicted under No. 15,500 of this District on charge of violation of the Mann Act.

"Some question has been raised in this State as to whether an attorney may represent a person interned as an enemy alien. Mr. Di Marzo is at present confined at the Tuna Canyon Detention Station, Tujunga, California, as an Italian National.

"In order that there may be no question as to my authority to represent him, and to make such con-

tracts as are necessary for witness fees and any details incident to a proper defense of this action, I hereby apply for permission, under the authority vested in you as Attorney General of the United States.

“It may be that no such permission is necessary, but there has been no construction placed upon this Act either by decisions out of your office, or by any judicial decisions of which I am aware.”

The Court (Interposing): That is a license from the President. As to that, you should apply to the President.

Mr. Lavine: A license from the President is not the form I had Mr. Di Marzo use. That was made through the Federal Reserve Bank of San Francisco, and what I am reading now is the letter to the Attorney General in which I applied [13] for authority to him because of those matters, because of the act of the President which refers all those matters to the Attorney General. In other words, the President has designated the Attorney General as the man who is to determine all of these questions.

The Court: This article here says, “Federal funds controlled by the Department of the Treasury.”

Mr. Lavine: Yes, but the authority to use them must come from the Attorney General; that is, the Attorney General has the authority, under the authority issued by the President, to refer the matter to the Attorney General, for a proper license on any particular situation. I also wrote the Sec-

retary of the Treasury and that is on the general licensing. I wrote that my client has officially applied for permission to pay me for my services from assets that are frozen, and my request includes the transaction involving the payment to me of my fee and money for the—in fact, the balance of the letter reads as follows:

“My client has applied officially for permission to pay me for my services from assets that are frozen, and my request includes the transaction involving the payment to me of my fee and for the money for the transaction therein involved.

“Thanking you in advance for your consideration and determination of this matter, I beg to remain most respectfully yours.” [14]

The Court: What assurance have you that your client has money to pay your fee? In other words, were I just to appoint you as counsel, and you were to represent him as an indigent person?

Mr. Lavine: I have a contract and an understanding and agreement, and pursuant to that contract and understanding and agreement, he wrote out a power of attorney, under the general license that was issued under the authority of the Act, that any enemy alien may use \$500 for personal living expenses per month, up to \$500. I thereupon went to the Federal Reserve Bank in San Francisco, paid my own expenses, and I talked to the vice-president there, and he said he was in no position to interpret the Act. I beg your pardon, that is the assistant cashier I talked to, Mr. L. Eberson, and he had no authority to interpret the Act. He hunted



up the correspondence, the application of the defendant for a license, and it had been unanswered since August 3rd and still remained there, although it had been forwarded to Washington and there had been no reply and no consent given. He said, "I could go to the bank in Sacramento," which I did, "and if they wanted to permit me to enter the box, that was their concern." When I got there, they told me they had communicated with the Treasury Department but had received no reply and no authority, but that they would permit me to enter the box, which they did, and they permitted me to take \$500 from the box and which [15] was converted into a commercial check which I brought down with me.

Mr. Neukom: I have found the present Act, I think. May I ask for the opinion of the State Bar and see if it does not refer to the said Act?

The Court: No, I don't think it does.

Mr. Lavine: No, that refers to foreign agents only.

The Court: I suppose we had better take at least a few minutes until you can find the Act. Were those matters presented to Judge Ling?

Mr. Neukom: No, those are new matters.

Mr. Lavine: In other words, I went to San Francisco last Friday, and there was a statement of Judge Ling at the time that we were unable to get any money, or rather I made the statement to Judge Ling that we were unable to get any money or other things developed that could be brought up for preparation of the proper defense of this de-

fendant, and Judge Ling stated that they could be shown at the time they occurred, or at the time of trial.

Mr. Neukom: When this matter was presented to Judge Ling, you called his attention to this particular matter.

Mr. Lavine: I called the Judge's attention to the particular acts, but not to the particular circumstances, as far as I personally was concerned.

The Court (To Mr. Lavine): You mean not to your efforts in that connection or the lack of any definite decision on [16] the part of any governmental agency?

Mr. Lavine: That is correct; there has been no decision, and we were hopeful that we would hear concerning it. After all, it had been pending since April 3rd and we were direct in the matter. We went down to the Federal Reserve Bank that very day, I believe, or the day after, and then I had to go to San Francisco to further the matter, and I went to Sacramento to further the matter.

Mr. Neukom: I told Mr. Lavine at the time of the hearing that I would assist him in any way possible.

Mr. Lavine: That is correct.

Mr. Neukom: And he didn't send me a copy of the letter he wrote to the Attorney General, and now the government has brought two people from Tehachapi and one from San Quentin. We have been put to a terrific expense, and in addition to that, Mr. Lavine does not present to this Court any matter or any thing on which we have assur-



ance as to whether or not this motion is really being made in good faith, or no potential evidence.

The Court: He hasn't said that he cannot obtain witnesses yet. He has been dwelling so far on the fact that he cannot obtain any money, or, more than likely, counsel fees. I wouldn't have any hesitancy in appointing Mr. Lavine as counsel for this man, providing it were shown that he was an indigent person, but where a man has ability to pay, I think counsel is entitled to be paid, and I think that the [17] defendant is entitled to choose whatever counsel he wants to have represent him.

Mr. Lavine: I suppose the United States Attorney should make representation to the Attorney General that some answer should be expedited in this matter.

Mr. Neukom: I most certainly would have done so had I had a copy of that letter, but I was very definitely of the opinion that the answer did not apply, and, in fact, Mr. Lavine was told at the time that he appeared before Judge Ling that we guaranteed and promised him immunity. I think the record will show that.

Mr. Lavine: I don't want to have to try a case with a guarantee of a promise of immunity. I think, without a clear definition of the Act, that the Northern District might have something to say, although I have proceeded because I thought perhaps we might have to go to trial and I have spent time and money and efforts, and everything possible, to get the fee expedited and prepare the case.

Mr. Neukom: I would like to read and file with

the Clerk a teletype I have just forwarded to the Attorney General:

"Re U. S. versus Joseph Di Marzo, Docket No. 15500. Attorney Morris Lavine representing defendant claims he wrote your office in August as to his liability to represent this defendant in criminal proceedings now on trial in view of the provisions of 'Trading [18] with the Enemy Alien Act of 1917,' and the 'Foreign Agents Registration Act' as amended this year, but has received no reply. He urges a continuation because he thinks he might be subject to prosecution by representing this alien enemy although we have assured him no prosecution would be had. We feel that does not apply and that he is entitled to fees from enemy alien as counsel fees, some of which he has received. Would appreciate an immediate response from your office as to interpretation, whether he must register with the Attorney General, and an assurance that he is secure in representing this enemy alien in this particular criminal proceeding. Court is awaiting your response."——

"United States Attorney, Los Angeles."

The Court (To Mr. Neukom): You may file that.

Mr. Neukom: Now the situation with regard to the trading with the Enemy Alien Act of 1917, is rather unique, in that Mr. Lavine should urge, as he has. There is certainly not a reported case under any of those sections where any attorney was compelled to represent or was subject to prosecution for representing an enemy alien. I think the Court will take judicial notice of the fact that many aliens

are even, in this country, accorded the right to proceed in civil actions and are being represented by counsel, and all the cases hold that unless those rights [19] are definitely suspended by Executive or other Congressional enactment, an enemy alien is entitled to the provisions of the Fourteenth Amendment, which is equal protection of the law, and he is accorded the same rights as anyone else.

Now the particular point was not presented in this case here, but is to some degree similar. It is a District Court case decided in 1917. I am merely citing it, 243 Fed. 419, where a German naval officer off of a cruiser, a German cruiser, had been interned or prosecuted under the Alien Act, and also for smuggling certain equipment, scientific matter and equipment into the country, and he contended there that he was entitled to diplomatic immunity and he could not be prosecuted in the civil courts. I cite that case, as that is one of the contentions that Mr. Lavine urged before Judge Ling.

The Court: Inasmuch as that matter has been disposed of, I do not propose to pass on it again. In other words, I think Judge Ling's decision is the law of the case.

Mr. Neukom: I will pass that, then.

The Court: I have heard the motion for a continuance and the statements made in support thereof, and I'm not considering it in connection with the illegality of the prosecution, but only on the continuance.

Mr. Neukom: I will pass that, then. This article in the Bar Association Journal, I know, caused

considerable turmoil among attorneys because we received quite a few [20] calls, but I am confident that if the Act is read and with the support of the cases that come under it, it will be very clear that there is not a case holding that an attorney cannot represent an enemy alien in either criminal or civil proceedings when he was living here prior to the enactment of the War, in any matters with which he might be confronted. What gave confusion to this particular article—in all respects, I think the man was wrong—is that that Foreign Registration Act of 1938, as amended, and is to be found in the United States Code Congressional Services of 1932, Edition No. 4, a rather lengthy Act, which has certain exemptions. I am not going to endeavor to interpret it at this time, but I think a reading of this will clearly indicate that it was the aim of Congress, in passing this, that a registration must be had with the Attorney General as to people who were representing enemy alien agents, so that the government could at all times——

The Court (Interposing): Enemy alien agents?

Mr. Neukom: Yes, enemy aliens or agents of——

The Court: It is only agents of the foreign governments.

Mr. Neukom: That seems to be the purpose of this Act, but even this Act states if you are going to represent those people, it doesn't prohibit you, it states you must file with the Attorney General a registration, and it is very clear in saying to you what you must inform the Attorney General of, and Mr. Lavine has apparently not done that, and the



Act was [21] passed in April and it was approved on April 29, 1942, and I don't believe it has any application to the proposition that is before us; but if your Honor will examine the Act, it is very clear that it gives Mr. Lavine the right to—it has certain exemptions, but it gives Mr. Lavine the right to inform the Attorney General of his client and to comply with all of its provisions. Since we approach this proposition in regard to a motion for a continuance in the matter, of course, the man is entitled to a fair trial, but this Court has not been told at any time or informed in any wise as to whom this defendant wants as a witness and how he is prejudiced by not having him here. These are busy times and to keep continuing cases, and spending money on these witnesses without an adequate showing in that regard to the Court, I think is not a well founded motion.

The Court: I don't think this Act applies because it says, "the term 'person' of course includes any individual, various members of government or various members of political parties (reading further in the Act)." I don't think that that includes, so far as any accusation has been made against this defendant—I mean there isn't any knowledge on the part of the Court in this case that this defendant is a foreign agent, that is to say, he is going or acting as an enemy of the United States. I don't think he would have to register under that Act at all.

Mr. Neukom: Neither do I, at all. I don't think he [22] would.

The Court: But I also learn that just because something had not yet been decided was no reason that the point wasn't good.

Mr. Neukom: That is very true. I don't urge that, but it is rather significant——

The Court: It is singular that the point was not raised during the last War, that is according to the reported decisions. I think, in view of the fact you have sent your telegram—of course, what Mr. Lavine is interested in is two things, as I see it; one is a disclaimer on the part of the Attorney General that they do not claim he has to have a license. I don't think your telegram is clear in that respect.

Mr. Neukom: I will send another one.

The Court: And the other one is that the Treasury Department should make some reply. I think he is entitled to know whether or not they will release the funds to him or deny the funds to him.

Mr. Neukom: Now he has the funds. I never asked him as to the amount. The funds are impounded. Mr. Di Marzo cannot obtain them. They are secure there. I told Mr. Lavine I would do everything possible to assist. I didn't want to ask him what he wanted as a fee, because I thought it was none of my business, but I told him if he wanted to [23] tell me what his fee was to be, I would have our offices write to the Federal Reserve Bank and urge that fee and that his request was reasonable that they release that money to him.

The Court: Well, I don't know that the United States Attorney is in a position, and I don't think I would be in a position to suggest that you take



any action as to how they should act. The only thing I am suggesting is that the United States Attorney can ask them.

Mr. Neukom: It is obvious at this time I cannot ask the Federal Reserve Bank to properly respond by tomorrow. I think that such a matter should have been called to this Court's attention a little while back. Now, Mr. Lavine talked to me a couple of weeks ago and I think told me he had some money——

Mr. Lavine: No, I talked to you when I returned from San Francisco last week. I was in San Francisco a week ago last Friday and I returned on the following Monday and I talked to you that day.

Mr. Neukom: We are confronted with an additional practical proposition. As the Court has pointed out, this man has known ever since April that he had a complaint against him. It is true the indictment was not filed until July 1st of 1942, but people are—even enemy aliens are obtaining moneys, any reasonable amounts from that which they have, and I do not believe that there is an adequate [24] showing before this Court that every effort has been made to try to obtain some moneys to pay his counsel fee.

The Court: Well, I am not concerned with him getting the money. That is not a concern of this court, but in connection with this matter, I think he is entitled to a reply from whoever, or from whatever governmental agency has charge of the matter. They can either refuse it or deny it. Of course, Mr. Lavine might get himself in an anoma-

lous position, for if it is refused and I should appoint him to defendant the defendant as an indigent——

Mr. Neukom: I asked Mr. Lavine to tell me what bank he was dealing with before he went up to San Francisco. I told him I would do everything I could. As you have pointed out, your Honor, I was not to assume or to suggest to the Federal Reserve Bank what they should pay, but the fact is that he has received the money.

Mr. Lavine: Not with the consent of any governmental agency, but with the consent of the bank letting me enter the bank, and the governmental agency stated it would be at the risk of the bank and they would have to take their own responsibility, and in view of that, I have no concealment of the amount received or the amount to be received. There was a thousand dollars in the box, and they allowed me to take \$500, and there is still another \$500 there which they will permit me to remove.

Mr. Neukom: May I assume to follow the analogy: Let's [25] assume that a robber had 20 or 30 thousand dollars that he robbed from a bank, and he walked into an attorney's office and gave him \$10,000 and that it was a partial receipt from the bank robbery. It is very true that an attorney, in accepting that \$10,000, might ultimately be confronted with the proposition that he had to return it because it was stolen money. Now, that problem as to trying to tell a government agency that they are going to give Mr. Lavine a complete immunity, as your Honor fully knows——

The Court: They cannot do it.

Mr. Neukom (Continuing): —is something we cannot obtain. Now, all we can obtain from the Attorney General is an assurance that he does not need to have a presidential license, or a license to represent this man here, with regard to the Act of 1917. I think if you obtain that, Mr. Lavine, that that is the answer.

Mr. Lavine: Whatever I can obtain.

The Court: If the answer is that he does have to have a license, obviously the trial cannot proceed tomorrow, and if we have the information that he does not have to have a license, I think the trial can proceed and that the jury can be instructed not to come back until 2:00 o'clock tomorrow and we will be able probably to go to trial at that time if the Attorney General so advises either Mr. Lavine or the United States Attorney that in their opinion at the present time Mr. Lavine does not require a license. [26]

Mr. Neukom: I will state to him, and I think I am authorized to do so, that Mr. Lavine is assured immunity from our office.

The Court: Well, whatever your assurance is worth. After all, you are speaking as a governmental agency. We will continue this until 2:00 o'clock tomorrow and by that time you will have some word from the Attorney General.

Mr. Lavine: Now I make this statement to the Court on various matters that I read and I did not testify as to those. If Mr. Neukom would stipu-

late that if I were sworn I would so testify, or if not I will take the stand and testify.

Mr. Neukom: That is not required, Mr. Lavine. Whatever you have assured this court you have done in good faith.

The Court: It is so stipulated?

Mr. Neukom: So stipulated.

The Court: Now you had one other matter.

Mr. Lavine: One matter that your Honor said was the law of the case, but before we go into that I wanted to merely state this fact that I renew my objection at this time so that my record is clear.

The Court: On the additional grounds?

Mr. Lavine: On the additional grounds: We object to the jurisdiction of the Court to proceed because this defendant is at the present time interned in an enemy alien camp and cannot receive a fair trial under those circumstances, [27] which is guaranteed by the Fifth Amendment to the Constitution of the United States, nor can he receive an equal protection of the laws which that amendment authorizes to all persons residing in the United States or who come to trial within the United States.

Your Honor can very well see that a person who is so confined does not have the same rights as all other persons who are admitted to bail, and this defendant furnished bail and was taken off of bail. He did not have and does not have the same right of constitution.

The Court: He was on bail only one day.

Mr. Lavine: One day.

The Court: I think you said the bail was \$2,500 and some time later it was increased to \$10,000.

Mr. Lavine: Yes, he was released when the \$10,000 bail was furnished.

The Court: Was that before he was in the internment Camp?

Mr. Lavine: No, then he was taken to the internment camp and that bail was increased.

The Court: Well, let's see, April 7th he was first taken into custody. On April 5th he surrendered, on April 6th he furnished bail and the next day he was taken into custody as an enemy alien, is that correct?

Mr. Lavine: That is correct.

The Court: And put in San Pedro? [28]

Mr. Lavine: Yes, but the bail was raised from \$2,500 to \$10,000.

The Court: At that time?

Mr. Lavine: At that time. But as he was furnishing the \$2,500 bail, or immediately thereafter, the same day, it was increased.

The Court: Oh, I see, and he furnished the \$10,000 bail?

Mr. Lavine: Yes, he furnished the \$10,000 bail. And that bail has been available so that he could go out on bail as far as this charge is concerned any time he might have been at liberty to do so.

The Court: But he has at all times been in the custody of the United States Government?

Mr. Lavine: That's right.

The Court: As an enemy alien?

Mr. Lavine: That's right.



Mr. Neukom: Being detained by the Immigration authorities.

Mr. Lavine: That's right, and since our last hearing before Judge Ling, there has been an order, I have been informed, I don't know this of my own knowledge, that he be interned for the duration of the war.

Mr. Neukom: I will be very happy to read the extent of that.

The Court: I suppose it will be stipulated that he has had a hearing, is that correct? [29]

Mr. Neukom: He has had a hearing before the Board.

The Court: And the decision of the Board is that he was to be interned during the duration.

Mr. Neukom: The Board recommended it and the Attorney General, on August 12, 1942, approved the finding of the Board and ordered that he be interned, but telegraphed us on August 17th that he was not to be actually interned until the conclusion of this criminal proceeding but that he should remain in the custody of the immigration officers.

The Court: Well, you spoke a while ago about the Court being probably busy. Why should we proceed with the trial of this man if he is to be interned for the duration of the war? Why can't we go on with other matters that are waiting?

Mr. Neukom: Your Honor, that is not a matter that I have the conclusion or decision on. I have been requested to try this case. I didn't start the



case. Mr. Lazarus did, and I have been instructed to proceed now.

Mr. Lavine: I think that matters of this kind should be continued until after the duration of the war. It would not only insure justice in this case which I do not feel the defendant can receive whether innocent or guilty, but there are some things we cannot keep away from juries, but the ends of justice will be met as far as deportation proceedings are concerned.

The Court: I suppose I am not making this as a sugges- [30] tion to either party, but the Government is interested in the preservation of the testimony of the witnesses while the events are fresh in their minds. I don't know how long they remain fresh in that kind of a case.

Mr. Neukom: I have eliminated a few of them because I think they have not remained fresh or as fresh as they were in 1941, the day this crime was committed, if at all before we entered the war.

Mr. Lavine: January 24th, that's right.

The Court: Well, I don't know, I suppose the defendant would want to preserve the testimony of his witnesses in the event the matter was continued and go on calendar, is that correct?

Mr. Lavine: Yes.

The Court: By depositions. Of course, it would take a stipulation on the part of the defendant to take the depositions of the Government witnesses or defendant's witnesses, and I suppose a stipulation could be entered into, and to protect the defendant in any and all his legal rights.

Mr. Lavine: Yes, your Honor, I will stipulate that that can be done.

Mr. Neukom: And the Court can take the matter under advisement, of course.

The Court: I have no disposition to try to control the presentation of the trial by the United States Attorney, that is their responsibility, but my responsibility is on [31] this side of the bench, but it seems to me as though all of us are charged with responsibilities now of keeping the courts open and free for the movement of matters of immediate and great concern which come into these courts now.

Mr. Neukom: I would be very happy to have Mr. Lavine go up to the office with me now and use his good graces and he can come back up in the morning and talk to Mr. Silverstein, and I will have the Immigration people present.

The Court: I don't know, I am just suggesting, certainly *now* with any implication that it should be done, that if the matter is continued that the testimony of all witnesses, the Government witnesses and their witnesses could be preserved by depositions, but at any rate the matter will go over until 2:00 o'clock tomorrow awaiting reply from the Attorney General.

Mr. Lavine: Now, your Honor, also as to the objections which we have made, which we might dispose of before we have the conference tomorrow morning.

The Court: That is the objection as to the form of the indictment?

Mr. Lavine: No, the objection to the jurisdiction of the Court.

The Court: You said there was some objection to the form.

Mr. Lavine: I have no objection to that.

The Court: State that objection now. [32]

Mr. Lavine: That the Grand Jury which was selected, and it may require some evidence unless we can stipulate as to the facts, was composed entirely of men, and does not conform to the provisions of Section 411, Title 28.

Mr. Neukom: I will stipulate it was all men.

Mr. Lavine: Will you further stipulate that there have been no women on the Grand Jury panel in the last two years?

Mr. Neukom: Not in the seven years I have been here.

Mr. Lavine: So that for a period of seven years there have been no women.

The Court: Which in my judgment is wholly immaterial. That is this Grand Jury you are talking about, Mr. Lavine?

Mr. Lavine: Yes, and that there have been no names of women in the panel itself. You will so stipulate?

Mr. Neukom: Yes, and not on the petit jury.

Mr. Lavine: I will accept the stipulation.

The Court: Very well, that is the stipulation as to that.

Mr. Lavine: Now, then, I move to quash the indictment on the ground it was returned by a Grand Jury composed not in accordance with the

composition of grand juries as provided by Title 28, Section 411, U. S. Codes Annotated, which requires that jurors in a Federal court, and grand juries be composed in the same manner as they are in the State courts in which the courts are located, and I think you [33] will stipulate, Mr. Neukom, that there are women selected on the grand juries and the state courts of the State of California, and there are women selected on the petit juries.

Mr. Neukom: I will, and your Honor takes judicial notice of it.

The Court: Your motion is on purely technical grounds, or on the ground that some prejudice resulted to your client?

Mr. Lavine: On technical grounds.

The Court: You are claiming no actual bias or prejudice to your client by virtue of the fact that it was a jury of men?

Mr. Lavine: I don't know whether it was biased or prejudiced.

The Court: I am speaking now of actual prejudice to your client by virtue of there being men instead of women. Do you think your client would have had, in other words, would have had a fairer hearing before a grand jury, or greater consideration by a grand jury which had been selected in accordance with the usage and customs in a state court, or had there been women on the grand jury?

Mr. Lavine: I don't know whether or how to pass on that, that is something we cannot prognosticate, the degree of fairness, but my objection is based on non-compliance of the statute.

The Court: I will rule on the matter tomorrow.

Mr. Neukom: May I state two cases on one point, the [34] case, the Ballard case——

Mr. Lavine: And Glasser vs. United States, an Illinois case and the opinion written by Judge Murphy.

(Thereupon at 12:12 o'clock p. m., September 9, 1942, an adjournment was taken until 2:00 o'clock p. m., September 10, 1942.)

Los Angeles, California

Thursday, September 10, 1942

2 P. M.

The Court: United States against Joseph Di Marzo.

Mr. Neukom: Ready, your Honor.

The Court: Ready for the Government?

Mr. Neukom: Yes.

The Court: Ready for the defendant?

Mr. Lavine: No, your Honor, on the ground set forth, and continuing that matter, I think Mr. Neukom has some dispatches.

The Court: As this question is unsettled, I will deny that on the ground—or you might have your record, Mr. Lavine.

Mr. Lavine: May I complete my record on the first question?

The Court: Very well.

Mr. Lavine: In connection with the ground, that I have not had a full and fair opportunity to prepare and present the defendant's case upon proper consultation with him, and that this defendant is



thereby deprived of essentially the [35] rights granted under the Sixth Amendment of the Constitution of the United States. I wish to present these particular facts, and if there is any question about that, I think we can probably enter into a stipulation.

The Court: Are those in addition to those already stated?

Mr. Lavine: Yes, in addition to those stated yesterday.

The Court: You wish to present the facts which you stated yesterday?

Mr. Lavine: No, those are already in the record. I wish to state additional facts, because we adjourned at 12:00 o'clock yesterday.

The Court: You want to preserve those facts as well as additional facts?

Mr. Lavine: I want to preserve all the facts stated and to which we entered into a stipulation yesterday, and these additional facts: That at the session at which we last appeared, Judge Ling was sitting in this court prior to your coming into this court, your Honor——

Mr. Neukom (Interposing): August 8th.

Mr. Lavine (Continuing): ——and at that time, Mr. Neukom, as Assistant United States Attorney, stated that he would aid in facilitating proper consultation and conferences in the matter of attorney and client, between my client and myself. And he further stated that at any proper time that we desired to have Mr. Di Marzo brought to Los Angeles from [36] the internment camp at



Tuna Canyon Station at Tujunga, a distance of about 20 miles, that a request of the Immigration Department would bring about cooperation, and that I could confer with him in the grand jurors rooms, if I so desired, in the Federal Building. That is correct, isn't it, Mr. Neukom?

Mr. Neukom: I so said.

Mr. Lavine (Continuing): And in furtherance of that matter, that he could not be brought to my office nor taken to any other place, that proper mode and means of conference and consultation would be permitted under the circumstances I have narrated, also that I would be permitted to talk to Mr. Di Marzo privately at this place, and also that, if I went to the camp, I would be permitted private consultation, and if I desired to talk to him on the telephone, that that would be private.

The next day I called the Tuna Canyon Station and I asked the officer in charge there, I talked to him and asked for an opportunity to talk to Mr. Di Marzo on the telephone. He stated that I would be permitted to talk to him on the telephone, but he wished me to know that all conversations were attended by an extension telephone, and that anything that I said would be listened to, and everything that Mr. Di Marzo said would be listened to, and further that he had the responsibility of having charge of this Immigration Station and of all persons within it, and that was the func- [37] tion which he had to do in a manner in which he felt was for the best interests of our Government, regardless of any individual case, and that in so far

as Mr. Di Marzo was concerned, he was in no other category than any other person who was confined there and that they intended to listen to all conversations on all matters that went on there for the protection of their jobs, and the protection of the United States.

I told him I could not differ with him on the question of principle, but I felt, under the Constitution, I had a right to talk to my client privately. I went up there on various occasions, but when I requested that he be brought down here for any conference, I was also informed that that would be impossible. I asked that he be brought down here for conferences, but I was informed that that would be utterly impossible, that they did not have the facilities, nor the men, nor the opportunity to bring him down, and that if I desired any conferences or conversations I would have to go to the Tuna Canyon Station myself and confer with him there, and there alone, although the United States Attorney's office had requested that I be given these rights, that they did not feel that they could, under their particular situation accede to them. I therefore made possibly as many as eight, and it might have been even ten trips to the Tujunga Station and talked to Mr. Di Marzo there. I was afforded an opportunity to talk to him first out in the [38] detention yard, or on the porch of the yard with an officer watching, and observing everything. I don't know, I can't say that he heard anything, I can't say that he did or he didn't. I tried to make my voice and my conference private, but the

place is so constructed that the voices carry, and I don't know whether it is wired for sound or that they heard everything of everybody or not, but as far as I know we were permitted to talk alone, to talk and confer about our case in a room inside of one of the buildings without the hearing, at least possible hearing of any officer although persons were in attendance at different parts of the place.

The Court: How big was the room, about as big as this room?

Mr. Lavine: Oh, no, not as big as this. A square of this particular bench would be about the size of the place of the conversation in the room, and there is a screen in the room between this room and another room on the other side where there are persons present, and I don't know that any of our conversation was heard or overheard by anyone, I couldn't say for a fact, your Honor, but I can say that those were the conditions under which I had to hold my conferences and consultations, and the times which I had to hold them were there at the Immigration Department and I couldn't go up in the daytime during the time I had court proceedings and business here in the city to attend to, so [39] I went there in the evenings, and they permitted me to see him in the evening, and as to the hours, they furnished me accessibility to him in that respect, and in this manner they were cooperative, but they were under circumstances that I certainly do not feel that any other person charged with crime, even of the most serious crime of mur-

der, is confronted with in this country, and we have therefore a duty to perform in so far as persons who are charged with offenses, who happen to be foreigners, a duty to set a high standard for those persons of other countries who were confronted with the problem of Americans in their own country so that they might do likewise, and I do not feel that, under the circumstances I had as much opportunity to prepare even as Mr. Neukom would have liked to have had me do at the time when we had this matter in Judge Ling's court, at which time he personally and fairly and properly asked that the man be brought here for conference as the occasion might require, and these are matters as to the particular facts that I have stated. If Mr. Neukom will stipulate as to those facts or if he wants to put the Immigration Officer on, he may do so, or I will swear to this statement of facts.

Mr. Neukom: I wouldn't be in a position to stipulate entirely to your facts because I conceded before Judge Ling and made a suggestion that he be accorded a chance to talk to Di Marzo down here, but I was informed that I was exceeding [40] my authority and that he was detained by the Immigration people and that they could not bring him down unless they were subpoenaed, and their regulations forbid them bringing him down except in a court proceeding.

The Court: How did he get here?

Mr. Neukom: By subpoenaing Mr. Del Gurcio to produce him.



The Court: Was he brought here today on a subpoena?

Mr. Neukom: A subpoena was issued for the reason that if this man should escape, he would be under process of court in producing the body of the man here in this trial. I promptly told Mr. Del Gurcio the situation and I said "You must accord Mr. Lavine a chance to talk to him in a room which is suitable and large enough so that a guard can be at the far end of the room at the door, and he shouldn't listen or attempt to hear anything that was said", and I can say this truthfully that we have no evidence, none at all, there has anything come to our attention that has happened out there. We know of nothing that has transpired and will offer no evidence of anything that has been said, because we know of nothing that took place out there. We feel that he has had the same rights with counsel that he would have had if he were in the county jail, and as you know the attorney's room there is nothing more than several benches.

The Court: I know what it is.

Mr. Neukom: And parties are sitting side by side and [41] can overhear everything that has gone on and we have given him far, even farther latitude than is accorded there and accorded in many jails, and have requested that anything at all that he would require in connection with his case, if he would let it be known to us that we would endeavor to provide it for him. Mr. Lavine at no time requested that I bring him to the grand jury room. Two weeks passed by without any such re-



quest coming from Mr. Lavine, whereupon I called Mr. Lavine and told him I understood he couldn't be brought down, and he said he knew that anyway, he found that out at the station so there was no necessity of him requiring me to bring him down here. The man has had the same chance that any other person would have to confer with counsel. A showing such as this, without being fortified with reasons whereby he has been prejudiced, and where he does not show specifically to the Court where he has been prejudiced by inability to secure testimony or witnesses, to my opinion comes rather late, and additionally, Mr. Lavine hasn't even told your Honor anything that he feels he has been deprived of, at least in defending this man. We know that frequently we used to keep federal prisoners down in Orange County and people had to go all that distance to confer with them and unfortunately we cannot regulate where they are. They are not in our custody.

The Court: Do you have anything further?

Mr. Lavine: I wanted to swear to those facts as being [42] true.

The Court: Mr. Neukom, you will stipulate that if Mr. Lavine were put under oath he would testify in accordance with his statement on this matter?

Mr. Neukom: So stipulated.

The Court: I think the motion made on this ground should be denied for two reasons: In the first place, there isn't any showing of any prejudice, no showing of anything which might have

been accomplished had the situation been otherwise, number one and number two. I think he has had a reasonable opportunity to prepare and to consult in reasonable privacy concerning all of the factors that are involved.

Mr. Lavine: May an exception be noted?

The Court: Very well.

Mr. Lavine: Before we leave this motion as to the question of prejudice, the degree of prejudice that a prisoner suffers by reason of his failure to have ample opportunity to confer with counsel is one that cannot be demonstrated at this time or stage of the case. The very fact that he is denied that constitutional right is a prejudice that exists there. Supposing that an accused has no opportunity to have counsel at all.

The Court: It is quite different than that. I mean he did see you.

Mr. Lavine: He saw me eight or ten times.

The Court: And in your statement yesterday, you have [43] prepared as well as the circumstances would permit, and you have prepared——

Mr. Lavine: I have prepared as such circumstances would permit, but not as well as I would like to have prepared had the defendant been granted the same rights as any other person who is detained, as any citizen or subject of this country.

The Court: Of course, we cannot prepare carpeted rooms or plush chairs for prisoners to consult their counsel. Of course, I think they ought to be provided with counsel.

Mr. Neukom: He did have a chair and a table.

Mr. Lavine: The difficulty is this, your Honor, that in so far as a person who is in a situation such as this defendant, but who has posted bail and who has an opportunity to go out under bail, which our Constitution allows to any person accused of crime, he can make his own investigation and find his own witnesses. He may know facts that even an attorney or investigator cannot know.

The Court: The man has to show some reasonable probability and not simply "you know if I had a chance I could have found some witnesses". I use that for illustration, and he has to show, if he had a chance to be in New York he has a reasonable probability to believe or some other reason that he could have along that line, something which is a fact, and no such showing is made at any rate.

Mr. Lavine: We are confronted with this situation. [44] There will be testimony offered by the Government, as I understand, in this case, that the woman involved was with somebody else at the time she left for the ship going to Honolulu. Now I don't know, nor neither does my client know the name of that particular person, as that name now exists, because these people seem to have had different names at different times, but an investigation can be made. I could not uncover it but possibly he himself could uncover that name and location of the party's whereabouts.

The Court: There has to be more of a showing than a mere possibility.

Mr. Lavine: We know that such a person is a material witness in this case.

The Court: How do you know what he will testify to?

Mr. Lavine: We know he would testify to the facts.

The Court: The motion is denied on that ground.

Mr. Lavine: Exception noted. I wish to make a second motion; that we have a continuance on all of the grounds heretofore set up in our previous argument. I don't think your Honor has ruled on those, we continued it over.

The Court: Except this one specific thing. Now do you wish to make a separate motion on that?

Mr. Lavine: On the question of "trading with the enemy act"?

The Court: You are making this motion on the other ground you stated yesterday, that is the legal ground. [45] Your motion is denied on those grounds.

Mr. Lavine: May an exception be noted?

The Court: Very well.

Mr. Lavine: And the third objection is that the defendant, by reason of the "trading with the enemy act" sub-divisions 2 and 3 thereof, although he has means to pay counsel, and means to pay for the cost of his services, he is unable to do so by reason of the fact that his counsel, if he proceeds, could be liable under the "trading with the enemy act" of trading with the enemy.

The Court: Without a license.

Mr. Lavine: Without a license, and that he has applied for a license and that there has been no answer to his inquiry, and there has also been teletypes between the Attorney General's office and the Deputy Attorney General in charge of this prosecution, Mr. Neukom, and which as yet have not been answered effectively so as to assure counsel that he is in the clear in acting in the defense of this man and that he is not trading with the enemy in accepting a fee and defending him.

The Court: It is stipulated you have in your possession now the sum of \$500 which was obtained from a safety deposit box?

Mr. Lavine: So stipulated.

The Court: After his filing an application but without any action on their part formally to you?  
[46]

Mr. Lavine: That's correct.

The Court: All right. The motion on that ground is denied, on the ground that the "Trading with the Enemy Act" does not comprehend a Presidential license for a contract involved between an attorney and client in defense of a criminal matter wherein the United States is the prosecutor.

Mr. Lavine: And that Act also does not apply to an attorney except in a fee.

The Court: Well, it doesn't apply to an attorney at all. You can't be trading with the enemy.

Mr. Lavine: Now, may an exception be noted to that?

The Court: Very well.

Mr. Lavine: Now the third motion.



The Court: I examined the law in that action, the Glasser case, and as soon as I saw it, I remembered the matter. I don't think that that is applicable here because as I construed the Illinois statute it was mandatory, and although they said it was mandatory, they said it had not been in effect long enough prior to the empaneling of the grand jury to permit an opportunity to have excluded women and no prejudice was shown or attempted to be shown and moreover on the further ground that as stated in *re Ballard*, and I think some other District Court opinions here, that it is not mandatory that women be included in the panel. So that motion is denied and your exception is noted. The Court will call the roll of the jury. [47]

We will take a recess until tomorrow morning at 10:00 o'clock, but in the meantime you are admonished not to discuss this case among yourselves nor to offer or express a conclusion to any person concerning any of the matters or things at issue in this trial or which have transpired in the court room.

(Whereupon at 4:30 o'clock p. m., September 10, 1942, an adjournment was taken until Friday, September 11, 1942, at 10:00 o'clock a. m.)

Mr. Lavine: At this time, your Honor, we renew the motion which was made with reference to the Grand Jury and with reference to Petit jury, that is to say, that there were no women on the Petit jury panel from which this jury was impan-

eled and that there have been no women on the panel for the selection of this jury, and further that the procedure under Section 411 of Title 28, U. S. Codes Annotated, provides for the same jury selection as exists in the courts of the State in which the court is located.

The Court: The matter has been ruled on.

Mr. Lavine: As to the Grand Jury. Now, if Mr. Neukom will stipulate that the same stipulation we had with reference to the Grand Jury may apply to the Petit jury and that motion may be deemed renewed as to all objections and all rulings with reference to the Petit jury we made to the Grand Jury, I will accept the stipulation and the ruling [48] of the Court as a part of this record so that I may preserve my record.

Mr. Neukom: I stipulate and abide by the ruling of this Court and other courts in that regard.

Mr. Lavine: I accept the stipulation.

The Court: My ruling is the same on the renewal of your motion.

Mr. Lavine: As to the Petit jury?

The Court: Your motion before included both the panel of the Grand Jury and the Petit jury, as I understood. My ruling is the same and the same grounds.

Mr. Lavine: Exception noted. [49]

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### JOUBERT BRYAN HURD

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

(Testimony of Joubert Bryan Hurd.)

Direct Examination

By Mr. Neukom:

I have appeared here in response to a subpoena served upon the Matson Navigation Company. I am not acquainted with Joe Di Marzo, nor with Miss Beverlin, also known as Mrs. Judith Bradford. I have never seen them, as far as I know. I have produced records of the Steamship Company pertaining to the sailing or the transportation afforded to one Mrs. Judith Bradford on the SS Lurline on or about January 24, 1941. This is the original ticket checked in by the purser of the steamer and the original berth list produced after the voyage is completed. This is the only record of that matter.

(It was here stipulated that the Government may introduce photostatic copies in place of the originals and the originals may go back to the company—reserving any right the defendant may have to object to the documents.)

(A one way cabin class contract ticket No. 56066 was marked for identification as "Government's Exhibit No. 1.")

(A berth list of the SS Lurline, sailing January 23 and 24th, cabin class was marked for identification as "Government's Exhibit No. 2.") [50]

By the Witness:

Government's Exhibit 1, for identification, is a photostatic copy of the ticket for the party whose name appears upon the ticket. Upon Government's Exhibit 2, for identification, the berth list, I find

(Testimony of Joubert Bryan Hurd.)

the name of Bradford, in Room 406, Berth "D". That refers to the Lurline.

Mr. Lavine: I object to all this testimony, as irrelevant, incompetent and immaterial at this time and subject to any reserved ruling that your Honor may make as to connecting it up.

The Court: Well, I will overrule your objection and your motion to strike that which has been testified to so far, giving you the right to renew your objection and motion in the event it is not connected up.

Mr. Lavine: Note an exception.

By the Witness:

The name and initials are Mrs. J. Bradford.

Mr. Lavine: May I have a general running objection to this particular testimony with the understanding I do not have to renew my objection to every question that he may ask?

The Court: You say your "objection". What is your objection?

Mr. Lavine: My objection is that there has been no foundation laid and it is irrelevant, immaterial and incompetent at this time.

The Court: The objection is overruled and it may be [51] deemed that you have objected to each of these questions and my ruling will be the same without repetition of it, if you so desire.

Mr. Lavine: Exception noted.

By the Witness:

Government's Exhibit 2 for identification is made before the beginning of the voyage and a final

(Testimony of Joubert Bryan Hurd.)

check is made by the purser during the voyage, and it is turned in as an accurate berth sheet at the end of the voyage. Any changes are made and indicated by the purser enroute. It contains many other names than the ones I have identified.

### Cross Examination

I could not say whether I did or did not see anyone write any of these names on the berth list or on the passage contract. I possibly might have. I have supervised the work at the office and I couldn't say. I can't say now whether or not I saw anybody by the name of J. Bradford write the name on this passage contract. I can't say now that I could identify the person who wrote the name on that contract. I wouldn't be able to pick out the person who signed that name on the list. I myself didn't make up this berth list. I know of my own knowledge whether Mrs. J. Bradford went into room 406 or not. I was not on the boat. I did not see anybody by the name of J. Bradford go into cabin B of Section 406. As to whether I really don't know who occupied that berth on that trip, of my own [52] knowledge, well, our own knowledge goes to our official records.

Mr. Neukom: I object to further interrogation along this line because, obviously, the witness answered or has indicated he doesn't know.

The Court: Objection sustained.

Mr. Neukom: He is here merely to introduce records kept in the regular course of business.



(Testimony of Joubert Bryan Hurd.)

Mr. Lavine: Just a minute. I note an exception to your Honor's ruling.

By the Witness:

I know who else occupied that particular cabin of my own knowledge. I didn't see the other people. I didn't see them personally. The berth sheets are made up before the ship sails. These passage contracts are returned at the completion of the voyage. This particular ticket was a one way cabin class contract ticket. The price charged for this ticket was \$105.00. The rate on a roundtrip ticket is twice that amount. There is no reduction for a roundtrip ticket. In January the Lurline left from Pier 156, Wilmington. It left from San Francisco the day previous, but final sailing was from Los Angeles. Some of these people on this berth list got on in San Francisco, and some in Los Angeles. That is indicated at the top of the berth list, "San Francisco" and "Los Angeles Harbor". We check in all those that get on here. I can tell from this berth [53] sheet where they did get on. I have here records to show how the ticket was purchased, whether by cash or by check or otherwise.

#### Redirect Examination

By Mr. Neukom:

Originally Mrs. J. Bradford, according to our records, purchased a first class ticket. The price of it was \$150.00. A second class ticket, a \$105.00 ticket was what she actually sailed upon. There

(Testimony of Joubert Bryan Hurd.)

was a refund made to her of the difference between \$105.00 and \$150.00.

### Recross Examination

By Mr. Lavine:

There were at that time two classes of sailings. She actually sailed on the lower class fare, at \$105.00. We returned to her the sum of \$45.00 January 23rd, the day of the sailing, or the day before.

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### KATHERINE FRANCES MARION ANDERSON

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

### Direct Examination

By Mr. Crawford:

I know Joseph Di Marzo. I have known him since October or November of 1940. I know Judy Bradford, also known as Helen Merle Beverlin. I met her shortly after the holidays, in the early part of 1941. [54]

Q. Now, what was your business or occupation before your present confinement in the county jail?

Mr. Lavine: Just a minute. I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Lavine: Exception noted.

(Testimony of Katherine Frances Marion Anderson.)

The Witness: I was running a house of prostitution.

Mr. Lavine: I move that the answer be stricken as prejudicial to this defendant and not within the issues of this case.

The Court: Motion denied.

Mr. Lavine: And no foundation laid. Exception noted.

By the Witness:

I was in the business of prostitution off and on since 1925.

Q. Now, speaking of being in the business of prostitution, what was your particular part in that business? Were you a proprietress or what is commonly known as the "madam" or were you one of the girls?

Mr. Lavine: I object to that as incompetent, irrelevant and immaterial and not within the issues of the case and it is prejudicial misconduct.

The Court: Objection overruled.

Mr. Lavine: Exception noted.

The Witness: Well, I was the proprietress of the place.

Q. By Mr. Crawford: Now, as such, did you have working [55] for you or under your supervision a number of girls?

Mr. Lavine: Objected to as irrelevant, incompetent and immaterial and not within the issues of this case and it is prejudicial misconduct. I ask the jury be instructed to disregard the answer.

The Court: The objection is overruled.

Mr. Lavine: Exception.

(Testimony of Katherine Frances Marion Anderson.)

By the Witness:

I had a number of girls at various times, but only one at a time though.

Q. By Mr. Crawford: Miss Anderson, I will ask you if, during the year of 1940, when you were conducting the business of prostitution, were the girls or girl sent to you by anyone or did they apply directly to you?

A. No, they were sent.

Mr. Lavine: I object to that as irrelevant, incompetent and immaterial and not within the issues of this case and is tending to establish some other offense or offenses relating to some other person and not as to this defendant and certainly the only issue here, your Honor, is related to one girl who is alleged to have been transported, and we certainly object to whether this woman had——

The Court: Transported for the purpose of prostitution.

Mr. Lavine: Yes, to Hawaii. But we have here a question asked about several girls and not this girl, and not related to this defendant, and I certainly object to any asking of [56] these questions as prejudicial.

The Court: Overruled, without prejudice to your right to make a motion to strike in the event it is not connected up.

Mr. Lavine: Exception noted.

By the Witness:

Since the latter part of 1940—I think it was

(Testimony of Katherine Frances Marion Anderson.)

November, the girls I had working from then on were sent to me by Joe Di Marzo. During that period of time Judy Bradford, also known as Helen Merle Beverlin, was in my employ as a prostitute. She was sent to me by Joe Di Marzo.

Q. By Mr. Crawford: Miss Anderson, during the time that Judy Bradford was employed in your establishment as a prostitute from whom would she collect for services rendered or who would collect the money for services rendered?

Mr. Lavine: Now, just a minute. I object to that as too vague and indefinite, possibly calling for a conclusion of this witness.

The Court: Objection overruled.

Mr. Lavine: Exception.

By the Witness:

Judy Bradford collected from the customer. At the end of the evening she would come into my apartment and give me half of the money which was my share, and if it were all but \$10 for each half I would get 10 per cent more for maintenance, meaning towels and janitor tips and a few other things. [57] She would keep her half and I would get half.

Q. By Mr. Crawford: Now, do you know of your own knowledge whether or not Judy Bradford divided the money that she had received from various customers at times while in your employ with anyone else other than you?

Mr. Lavine: Objected to as calling for the conclusion of the witness.



(Testimony of Katherine Frances Marion Anderson.)

The Court: The objection is overruled. The question calls for a "Yes" or "No" answer.

The Witness: Yes.

By the Witness:

She gave her money to Joe Di Marzo. I know of one instance. It was the early part of January, 1941, at my apartment at 751 South Normandie. This is the only instance I know of, and it was an odd amount. It was \$17.25. That is why I remembered it so definite. That was in my presence, in my apartment.

In the early part of January 1941, I had a conversation with the defendant in my apartment. There was Judy Bradford, my nurse, Miss Slover, and a girl named Renee, who since I have found out her name is Joan Day, Joe Di Marzo, myself. There was another couple there, but they had left at the time of the conversation. There were quite a few things said. Joe Di Marzo brought this girl Renee up and told me on the 'phone that he wanted me to meet his new girl. Judy at the time was working for me, but she was working in a different [58] apartment in the same building. I had two apartments, one I lived in and the other one that the girls used for their business. We had a 'phone in each apartment. When I wanted her I would call her. So Joe Di Marzo 'phoned me a little earlier and said he was bringing this girl Renee up and he wanted me to meet her and to be sure to keep Judy Bradford in the other apartment; that she didn't know he had a new girl.

(Testimony of Katherine Frances Marion Anderson.)  
They came in, and we had a couple of drinks. And finally he said, "You might as well bring Judy in." So I introduced the two girls.

He said, "I want you to meet your new sister-in-law." So there was a little more conversation, nothing specific; and then he came over to me and he says, "You know, you are going to lose Judy."

I said, "Why?"

"Oh, I am going to send her to Coney Island."

I said, "What in the world is Coney Island?"

He said, "Honolulu, you dope," or something like that. He said, "I am going to send her over there. She is not making enough money here, and the girls over there are making approximately a thousand a month, and she is going to take Dolly with her," Dolly being another one of his girl friends. So I didn't like it very well. Judy was a very good girl, and I was a little bit peeved about it. I didn't want to lose her.

Well, we were sitting around there. And I asked him— [59] I said—well, I said something about Dolly: "I don't care much about having her work." He said, "No. She's going to the Island too."

"But", I said, "who are you going to send up?"

He said, "I will find you someone pretty nice."

The nurse I spoke of was attending me. I was confined with a broken leg at the time.

After that conversation Joan Day did not go to work for me. I didn't think she was quite experienced enough. About June 1, 1941, I met and

(Testimony of Katherine Frances Marion Anderson.)  
had a conversation with Judy Bradford. Judy in the latter part of May was working for me again, and on Decoration Day, 1941, she was supposed to come to work, and Mitzi Bruno came downstairs from the apartment house where I was supposed to pick her up and said Judy was laid up with a broken jaw, couldn't come to work. I next saw Judy in the hospital, I think, two or three days later.

I had a conversation with the defendant in the latter part of June 1941 at Joe Di Marzo's home on Garland Street. Judy Bradford was present besides myself and Mr. Di Marzo.

Q. By Mr. Crawford: The conversation, Miss Anderson: relate the conversation that was had at that time and place which you previously testified to relative to any discussion had with the defendant regarding Judy Bradford's trip to Honolulu in the early part of 1941.

Mr. Lavine: My objection, your Honor, is that it is [60] too remote, this conversation several months afterwards.

The Court: Objection overruled.

Mr. Lavine: Exception.

By the Witness:

I asked him why they were arguing. He said the trouble started in Honolulu; that Judy didn't bring back the amount of money; that he had suspected that she had been running around in Honolulu. So I asked him, What about the \$500 worth of Traveler's check he was holding? He said that

(Testimony of Katherine Frances Marion Anderson.)  
he was going to keep them because Judy hadn't been behaving herself, and he was going to hold them and not let her have them. I think that is about all.

Mr. Lavine: If your Honor please, may I make a motion to strike all of this last testimony as being too remote?

The Court: Motion denied.

Mr. Lavine: Exception.

### Cross Examination

I handled prostitutes. I was one myself. I was not engaged in prostitution myself at the time that I had Judy Bradford as one of my prostitutes. I had other girls, though, from time to time. Judy was one of my very best. The customers seemed to like her better than most of the rest of them. As to whether I never had any trouble having her earn as much or more than any other girls I had—the earnings would be approximately the same because we only had a certain volume of business. I liked her and wanted her to [61] stay. I wanted her to stay in January of 1941. I hated to lose her because she was one of my best girls. She would earn during the month of January 1941, anywhere between \$15 and \$20 a day. She was earning that during the time she was there. That is net. That was her share. The gross would be \$35 to \$40, \$42 a day. I never saw her give any of this money to Mr. Di Marzo at any time, except on this one occasion that I spoke of. On that particular occasion, there was present this



(Testimony of Katherine Frances Marion Anderson.)  
couple that Joe Di Marzo brought in. I think the man is a bail bondsman. His name is Nelson. There also was present Renee, or Joan Day, whatever her name is; I don't know. I know it is Renee. I just met her that night. She is not a girl that works out in one of the night clubs. In January of 1941, I had this conversation at my apartment at 751 South Normandie. I think there just had been one drink served. A highball; by that I mean whiskey and ginger ale. My nurse wasn't drinking, being on duty. And I had one drink. During the course of the evening, I think I had two more. I wasn't allowed to drink very much at that time. I was in bed with a broken leg, and it isn't the best thing in the world. I saw Mr. Di Marzo come in. At the time he came in Judy was in the other apartment. Mr. Di Marzo came in with Renee.—Joan Day. I didn't know that Judy was engaged to Mr. Di Marzo. When Mr. Di Marzo came in with this other girl approximately ten minutes after that, Judy came in. She saw [62] him then with Joan Day. She didn't strike at him. She went in the kitchen and cried, I believe. I couldn't see quite that far. It was the early part of January. It was on that night that she gave him \$17.25. She gave him the money the minute she came in. And then she went out and cried. He was with Joan Day at the time she gave him the money. Judy was going to stay up there, and I gave her a key to the other apartment. We only had two beds in my apartment,



(Testimony of Katherine Frances Marion Anderson.)  
and my nurse slept in one and I slept in the other. So I gave her a key to the empty apartment. Joe went out to get some more liquor—I think that was it, and didn't come back for a couple of hours, and Judy got tired and left. I next saw Judy Bradford in the latter part of May, 1941. Oh, I saw her the next morning at my place of business. She wasn't there all day that next day. She did not work for me the next day. She never worked for me again from that day until the latter part of May, 1941. I saw her some time in June or July of 1941. I saw her so many times during that time that I know it must have been during the last of June because we visited her at the hospital, and I saw her in July because she used to spend her afternoons at my apartment. She showed me a few pictures she had taken over in the Island. She did not show me some pictures of herself with some boy friends in the Island. She said they were taxi drivers that had taken in the Island. I did not see the Traveler's checks. I [63] never saw the Traveler's checks. I never saw Joe Di Marzo with any Traveler's checks. I never saw him take any Traveler's checks from her.

Judy worked for me in the latter part of May 1941 for approximately a week or ten days. Then her jaw was broken and she was unable to do anything until July. She worked for me again during July of 1941, just in the afternoon for a couple of hours. She worked for me and received money from me. In connection with all these mat-

(Testimony of Katherine Frances Marion Anderson.)

ters that I have related, I was asked about them in the District Attorney's office in Los Angeles County. I know Mr. Phillip Tower, an investigator for the Los Angeles County District Attorney's office. I was not present in the District Attorney's office when Mr. Joseph Di Marzo was brought in. The only time I saw Joe D Marzo in the District Attorney's office was in, I think, Miller Levy's office. Miller Levy being a Deputy District Attorney of Los Angeles County. I think it was the middle of March, 1942. I don't remember the exact date. There was present at that time just Phillip Tower and Joe Di Marzo and myself. Miller Levy was in and out. I don't remember whether he was there at the time Joe Di Marzo came in. I do not remember at that time Mr. Di Marzo, in that place, with just me being present, that Mr. Di Marzo said he had heard me make some statements that he had taken \$500 from Judy Bradford after she had returned from Honolulu and it was not [64] true, and I said, "I never made any such statements". I do not remember that conversation. He didn't even mention \$500. I remember Joe and I having an argument in there. The subject matter of the argument did not start because I accused Joe Di Marzo of having caused my arrest. I did not state at that time "You are responsible for having me charged with the offense I am charged with, and I am going to get even with you." I pleaded guilty of contributing to the delinquency of Vicky Moore. I knew Vicky Moore first through Joe Di Marzo.

(Testimony of Katherine Frances Marion Anderson.)

Vicky Moore was the complaining witness against me. When I had this argument with Joe Di Marzo in that room on that occasion I did not ask him why Vicky Moore had brought this charge against me.

As to whether after Judy Bradford worked for me in May of 1941 she went to the Hawaiian Islands—I don't know anything about that.

Q. Didn't she leave to go to the Islands from your place?

Mr. Neukom: That is not a proper subject matter of cross examination, your Honor.

Mr. Lavine: It covers the period when she said she was having conversations and dealings with her.

The Court: Objection sustained. It is too remote.

By the Witness:

Mickey Moore testified against me at the preliminary hearing. [65]

#### Redirect Examination

By Mr. Neukom:

Mitzi Bruno introduced me to Vickey Moore.

#### Recross Examination

By Mr. Lavine:

As to whether I know that Vickey Moore had come to me from Joe Di Marzo—I had a conversation on the Telephone with Joe Di Marzo prior to Vickey's coming over there. As to whether I knew at the time that Vickey Moore was a witness against

(Testimony of Katherine Frances Marion Anderson.)  
me,—that Joe Di Marzo was aiding the District Attorney's office of Los Angeles County—I heard that he was, I didn't know for sure.

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### GENEVA ANN SLOVER

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Crawford:

I am by profession a Doctor's assistant. During the period of time from January, 1941, I was in the employ of Marion Anderson as a nurse. I know Joseph Di Marzo. At that time and place I had occasion to see Joe Di Marzo at the apartment of Marion Anderson. There was present Marion Anderson and Judy Bradford, and Renee, and also Joe Di Marzo. At that time I was on duty as a nurse. I was in the apartment, but in and out of the rooms. That apart- [66] ment has a bedroom other than a sitting room. At that time there was a conversation had between the defendant and Miss Anderson. I overheard Joe say he was sending Judy away. I was back and forth and I didn't pay any more attention. That is all I recall.

#### Cross Examination

By Mr. Lavine:

The others who were there that night were doing

(Testimony of Geneva Ann Slover.)

quite a lot of drinking. I couldn't tell you how many they had. But they were drinking quite a bit, and there was quite a bit of noise there that night. I don't remember whether I was or was not there the next morning when the landlady of the apartment house gave orders to move. Miss Anderson moved out of that apartment later on. I wasn't there when she moved. [67]

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### EMANUELL BERNARD ROSEGARTEN

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Neukom:

I know Joe Di Marzo. I first met him in November 1940. I believe that was at his home on Garland Avenue. I don't recall who was present.

Q. Did you ever meet Judy Bradford?

The Witness: If it please the Court, I believe I don't have any civil rights, granting you that I don't know anything about it, but I believe I still do own some constitutional rights and I refuse to testify on the ground that anything I might say is apt to further incriminate me.

The Court: On that particular question, Mr. Witness, I don't think it contains anything of a degrading or incriminating nature whatever your answer might be. And I think the general rule is that



(Testimony of Emanuell Bernard Rosegarten.)

it must appear that the particular question will tend to incriminate or degrade the witness rather than a general line of interrogation.

Mr. Lavine: The only observations I have for the benefit of the Court are that it may develop, your Honor, that as far as this man's connections or knowledge of Judy Bradford are concerned. I don't know. That is something he has to determine, and your Honor has to determine, supposing it involves [68] a Federal charge, or one that involves the very issue we are trying here as to this witness rather than the defendant on trial. Then it is a question for him and for your Honor to determine because the very knowledge of a person might be an incriminating answer.

The Court: That situation might arise. I am fully aware of that, and I want to assure the witness that whatever rights he has will be preserved to him and he will be protected in them, but he can lose no right by answering that question. Now, the situation might arise where a question in itself would tend to incriminate or the answer might tend to incriminate as it appears from the question.

The Witness: If it pleases the Court, I happen to be incarcerated in San Quentin penitentiary. I was sentenced there for pandering. Every person involved in this case is directly and indirectly connected with my being incarcerated in that penal institution at the present time. Consequently, anything that I would say at a future date might be used against me.

(Testimony of Emanuell Bernard Rosegarten.)

The knowledge alone of these persons or person might tend to incriminate me at a later date.

As I understand, Mr. Di Marzo's own convictions and statements given in a court of the state brought this trial up to the present time or else he wouldn't be in Federal court if he hadn't made and stipulated in various arguments prior to this time. [69]

The Court: I can appreciate your feeling that you do not want to do anything that will incriminate you or subject you to further prosecution.

I cannot see, however, how knowing a certain person would or would not tend to incriminate or degrade you.

Everybody is entitled to the presumption of innocence, and every transaction is entitled to be presumed to be an innocent transaction until otherwise proven.

The Witness: I do not intend to insult the intelligence of the Court by making that remark, but if your Honor will weigh the problem out, why, you will see where on my own rights that I don't have no feeling to testify merely on those grounds. Those are the only grounds I can preserve myself on and consequently those are the only grounds that I can try to protect myself on.

I think that I deserve every protection in the world in this particular case or any other case that may develop from it.

The Court: You shall have every protection that the law gives you. Certainly that question does not

(Testimony of Emanuell Bernard Rosegarten.)  
incriminate him and I am compelled to instruct the witness to answer that question.

The Witness: Then I have no alternative.

Q. By Mr. Neukom: Did you ever meet Judy Bradford?

A. Do you want me to answer that question?

The Court: Yes. [70]

The Witness: I want to make a statement before I answer.

The Court: Very well.

The Witness: If this is being taken, my remarks, I want it so stipulated in the transcript that I refuse to testify in this case. I have no desire to testify even to this question that you are asking me, and only upon your request I am compelled, as I see it, to answer his questions, is that correct?

The Court: That is correct, yes.

(The question was read as follows:

“Q. Did you ever meet Judy Bradford?”)

A. Yes, I did.

By the Witness:

I have seen the girl on a number of occasions. Just where I don't recall. I have seen Judy Bradford in the presence of Joe Di Marzo, if I recall correctly.

Q. Now, to clear up one possible thing, Mr. Rosegarten, as far as you know, you had no connection with the aiding or assisting of Judy Bradford to go to Honolulu in January of 1941, did you?

A. Definitely not.

(Testimony of Emanuell Bernard Rosegarten.)

Mr. Lavine: I object to that as calling for a conclusion from this witness, and it is irrelevant, incompetent and immaterial as far as this case is concerned.

The Court: Well, so far as he knows, that is the question. [71]

Ordinarily, I think a question like that would be improper but in view of the situation here and the fact that this witness is now incarcerated in San Quentin penitentiary and in the custody of the law and has indicated his desire to be protected in his rights and in view of the latitude allowed the Court in examining into matters such as these, I will permit that question and I will overrule the objection.

Mr. Lavine: Exception noted.

By the Witness:

I did not have a conversation with Joe Di Marzo in either November or December of 1941, where Joe Di Marzo in the conversation mentioned to me three girls and discussed a trip to Honolulu. I did not have such a conversation. I had no conversation with Joe Di Marzo with respect to his statement that he was going to send one of three girls to Honolulu. I don't remember if I was ever present in a conversation between the time I first met Joe Di Marzo, in the latter part of January, 1941, where he discussed with me the sending of Judy Bradford to Honolulu.

Mr. Neukom: Now, your Honor, I respectfully must urge that this witness is unwilling. He has been interrogated, and in good faith I can tell the

(Testimony of Emanuell Bernard Rosegarten.)

Court that he has made, statements, definitely——

Mr. Lavine: Just a minute. I object to any statements that the prosecutor says he made. He should do that outside of this courtroom. [72]

The Court: Yes, I think the jury must be instructed to disregard that.

Mr. Neukom: May I cross examine the witness?

By Mr. Neukom:

By the Witness:

I did not speak to Mr. Lavine last night at all. Mr. Lavine has spoken to me since I have been in the County Jail, but not in reference to the case.

I recall a venison dinner at my home in Los Angeles on Christmas Eve, 1940. I think Joe Di Marzo was present. At that particular evening Joe Di Marzo did not have a conversation with me with regard to securing money to send Judy Bradford to Honolulu, that I recall.

Q. By Mr. Neukom: Do you recall having had a conversation with me in the presence of Mr. Tyler Wednesday afternoon in the office of the United States Attorney on the sixth floor?

Mr. Lavine: Just a minute. I object to that as irrelevant, incompetent and immaterial, what conversation he had with the United States Attorney with reference to this case.

The Court: Objection overruled.

Mr. Lavine: Exception.

The Witness: Well, if I answer that question, your Honor, there is only one way I can answer that without impeaching myself. It seems that the



(Testimony of Emanuell Bernard Rosegarten.)

District Attorney is [73] trying to make a liar out of me, so to speak, and by answering that question, that is exactly what he is trying to do. I am down here, not because I want to be here. I had no intention of coming down here. I am down here against my will. I did not want to come down here to testify. That was told to the Federal Bureau of Investigation on two occasions at San Quentin Penitentiary and at my place of business on Central Avenue in Los Angeles.

The Court: You have, however, taken the oath here to tell the truth.

The Witness: Yes, I have.

The Court: And with respect to that oath, I know it is your desire to tell the truth. The question is in proper form and it calls for an answer, either "Yes" or "No."

Now, after you answer, if you desire to explain, you may have that opportunity to do so.

The Witness: All right.

The Court: In other words, so far as it is possible for this Court to protect your rights, this Court will do so.

The Witness: I did have a conversation with Mr. Neukom in the Hall of Justice Building here—in the Federal Building here on the sixth floor. That conversation at that time was not in bearing to the case. It was idle conversation that went on from one person to another. Whatever I may have said at that time—I could have said a number of things. However, it was not taken under oath, and it

(Testimony of Emanuell Bernard Rosegarten.)  
was [74] not taken down in a signed form of a statement. Therefore, I don't think that I——

Mr. Lavine: May I enter an objection here that he has answered the question that he had that conversation, and I think all the rest is now beyond the question.

The Court: Yes, I think that is correct. Proceed, counsel.

Q. By Mr. Neukom: Did you not, during that conversation, tell me, among other things, that on Christmas Eve of 1940 that Joe Di Marzo was at your home on Oakwood and that during the course of the evening he told you that he wanted to get ahold of \$500 each for three girls to send them to Honolulu?

Mr. Lavine: Now, just a minute. I object to that question as improper, as prejudicial misconduct, not within the issues of this case and not tending to prove any issues of this case and tending to inject other matters not in issue here that would involve other alleged offenses that are not at issue here that are highly prejudicial. I ask your Honor to instruct the jury to disregard it.

The Court: The objection is overruled.

Mr. Lavine: Exception.

The Witness: I may have said a number of things at that conversation. Included in that I may have said that. However, I don't know exactly what I did say. [75]

(Testimony of Emanuell Bernard Rosegarten.)

By the Witness:

I don't remember whether in the latter part of 1940, possibly New Year's Eve, I was present in Bakersfield in an auto court with my wife, Mrs. Rosegarten, and Joe Di Marzo. I was quite inebriated that night.

Q. Do you recall in my room last Wednesday that you told me that you, your wife, and Joe Di Marzo had driven from Los Angeles to Bakersfield on or about New Year's Eve of 1940 and during the course of that evening you met Judy Bradford, who was then up at Bakersfield?

Mr. Lavine: At this time I object. There is no proper foundation laid for this form of interrogation, and the question at this time is improper, irrelevant, incompetent and immaterial. This is an improper method of attempting to refresh the recollection or impeach the witness. There is no proper foundation laid for this form of interrogation. In other words, if he is attempting to refresh the recollection of the witness, it is improper, no proper foundation laid. If he is asking it as an impeaching question or as a hostile witness, there has been no foundation laid. And as far as the implications are concerned, I assign the asking of it as prejudicial misconduct.

The Court: The objections are overruled.

Mr. Lavine: Exception.

The Witness: Well, I believe I stated a minute ago, any conversation that I did have with Mr. Neukom a few days [76] back, I don't remember it or recall what I did say.

(Testimony of Emanuell Bernard Rosegarten.)

That was the question: Do you remember an incident that took place that I told him about in his office of that trip. I believe that is it, if I am not mistaken. Well, any conversation that I had with Mr. Neukom in his office, I don't recollect what I did and did not say.

The Court: His question is, Do you remember saying that particular thing.

The Witness: I don't remember.

Q. By Mr. Neukom: Do you remember that in my office Wednesday last, in the presence of Mr. Tyler, myself and your wife that you told me that during the trip to Bakersfield that Judy Bradford came over to the auto court where you people were staying and that Joe Di Marzo showed to you a stack of bills that you indicated was from two to three inches high and told you he had received those from Judy Bradford?

Mr. Lavine: Now, just a minute. I object to that mode of questioning, no proper foundation laid, irrelevant, incompetent and immaterial. I assign the asking of it as prejudicial misconduct.

Mr. Neukom: When I said, "bills", I mean currency, not obligations. I mean American currency.

The Court: You state on the basis that there is no foundation laid?

Mr. Lavine: Yes, your Honor. [77]

The Court: Objection overruled.

Mr. Lavine: That is one of the grounds, your Honor. Exception, your honor. If I haven't made myself clear, this is an improper method of ques-

(Testimony of Emanuell Bernard Rosegarten.)

tioning this witness. Attempting to refresh his recollection.

The Witness: I said a number of things. I don't really remember what I did say.

The Court: Well, his question is, Do you remember that?

The Witness: That specific incident?

The Court: Yes.

Mr. Neukom: Yes.

The Witness: No, I don't.

Q. By Mr. Neukom: Is it not true, Mr. Rosegarten, that I told you at that occasion in my room Wednesday that all I wanted you to do was tell the truth?

A. That is correct.

Mr. Lavine: Objected to as irrelevant, incompetent, immaterial, what conversations this witness had with Mr. Neukom in his office.

The Court: Objection is overruled.

The Court: It is always competent in any court I know to admit testimony that somebody has been told to tell the truth.

Mr. Lavine: Well, he has been told to tell it here, your Honor. But what he was told in Mr. Neukom's office is simply self-serving, as far as the United States Attorney [78] is concerned, and I assign that further ground.

Mr. Lavine: Exception to your Honor's ruling.

The Court: The objection is overruled.

The Witness: Yes, I believe you did.

Mr. Lavine: May I have a running objection,



(Testimony of Emanuell Bernard Rosegarten.)

your Honor, to all of the questions in this form and manner so that I don't have to keep repeating and perhaps wearing everybody out in order to protect my record here; that any of these questions asked in this form and in this impeaching manner are improperly asked and that they are without proper foundation and that they are irrelevant, incompetent, immaterial, as to matters that occurred somewhere else in Mr. Neukom's office? That they are irrelevant, incompetent, immaterial as to what conversations took place in Mr. Neukom's office.

The Court: All right. It may be understood that you will have those objections to this entire line of questioning without repeating the objection each time, and that the ruling of the court will be the same and that you may have exceptions to each one as if you had repeated in full your objection upon the occasion of each question.

By the Witness:

I first met Joe DiMarzo in November, 1940. I was in rather frequent contact with him after that for a period of two or three months. I knew him. I would see him on an average of two or three times a week. The last time I actually saw him was some time in January of 1941. Joe [79] Di Marzo did not tell me, on or about December 24, 1940, that he intended to send Judy Bradford to Honolulu. I don't remember whether I told you in your office Wednesday in the presence of my wife, Mr. Tyler and some other persons that were present there, that Joe Di Marzo had told me on or about December 24,

(Testimony of Emanuell Bernard Rosegarten.)

1940, that he was having trouble getting \$500 with which to send Judy Bradford to Honolulu. I may have. I recall on the interview in your office that you showed me a statement purporting to be taken of my wife.

Q. By Mr. Neukom: I permitted you to read it, did I not? A. Yes, you did.

Mr. Lavine: Now, to which I object, your Honor, as an attempt to get hearsay evidence before this jury, something that purported to be a statement taken from this man's wife, which is not in the presence of the defendant nor about which he knows anything at all.

The Court: It can only be admissible as preliminary. And on that basis it is admitted, and your objection is overruled.

Mr. Lavine: Exception.

The Court: Subject to a motion to strike, if it is not properly connected up.

Q. By Mr. Neukom: Do you recall that you told me in my office last Wednesday afternoon that you had driven up to [80] the apartment occupied by Judy Bradford at 618 South Detroit Avenue in the latter part of the month of January, 1941, and had seen a taxi going away?

A. Yes, I saw a taxicab that day.

By the Witness:

When Joe first introduced Judy Bradford to me, it was at Judy's apartment, I believe. My wife was not present. I first met Mr. Di Marzo in November 1940. He first introduced Judy Bradford to me in

(Testimony of Emanuell Bernard Rosegarten.)  
the latter part of November at her apartment at 618, or thereabouts, South Detroit. There were some other people present at the time, from some place in the western part of the country. We had merely a social conversation on that occasion. They knew nothing of any connection or any personal business or anything else.

I had a temporary address on Oakwood Avenue in the months of November and December of 1940.

Q. My Mr. Neukom: And is it not true that Joe Di Marzo brought Judy Bradford to your temporary abode on Oakwood, and in the presence of another person, whose name we won't mention, unless requested so to do, Joe Di Marzo said that Judy Bradford was one of his girls and would accept calls to be sent out upon as they came in?

Mr. Lavine: To which I object as irrelevant, incompetent, and immaterial. We are not trying Judy Bradford or Joe Di Marzo on any State charge or any conversations had with this man as to some address on Oakwood. [81]

The Court: Was the time fixed in that question?

Mr. Neukom: I said "November or December," your Honor, of 1940.

The Court: Have you completed your objection?

Mr. Lavine: Yes, irrelevant, incompetent, immaterial, not within the issues of this case.

The Court: Overruled.

Mr. Lavine: Exception.

Mr. Neukom: And I want to supplement that by in either the month of December or November, 1940.

(Testimony of Emannell Bernard Rosegarten.)

Mr. Lavine: Objected to as too complicated, compound, about five questions in one.

The Court: Overruled.

Mr. Lavine: Exception.

Q. By Mr. Neukom: Did the defendant, in your presence, at an address on Oakwood, tell you in the presence of another party that Judy Bradford would accept calls and go out on them that she was one of his girls?

The Court: In the months that you have named?

Mr. Neukom: The months of November and December of 1940, one or the other.

Mr. Lavine: I renew my former objections as not within the issues of this case.

The Court: The objection is overruled.

Mr. Lavine: Exception.

The Witness: As far as I can remember, he did not. [82]

(Three photographs are presented by Mr. Neukom.)

(The documents referred to were marked for identification as 'Governments Exhibits Nos. 3, 4, and 5.')

By the Witness:

Government's Exhibit No. 3, for identification, is a picture of Miss Bradford, I believe. I only knew one Judy Bradford.

(At this point Judy Bradford enters the court room.)

Q. By Mr. Neukom: The person who is here at my right, do you know who she is?

(Testimony of Emanuell Bernard Rosegarten.)

A. It has been some time since I have seen the young lady. She looks entirely different. But from the photograph I would say it is the same person.

Q. Was that the person you met, the Judy Bradford that you met?

A. I couldn't say definitely, to be frank with you.

Q. Did you ever meet any other person introduced to you by Joe Di Marzo who was identified as Judy Bradford?

A. I have been out of circulation for some ten months, Mr. Neukom, and faces of women just don't come back the way they used to.

(Judy Bradford leaves the courtroom.)

### Cross Examination

By Mr. Lavine:

I have absolutely no use for Mr. Di Marzo, to be very frank with you. My present attitude is out of the *desire* [83] *protect* myself alone. I feel that both my wife and I are at present incarcerated in prison as a direct result of activity on the part of Mr. Di Marzo. After I was brought down here I was taken to Mr. Neukom's office. I visited there with my wife. My wife was brought down from the State Prison at Tehachapi. I was permitted through the agency of the government to have a friendly visit with my wife. Mr. Neukom and the Government have been just as nice as anyone has ever been to me. I was shown a statement that was purportedly taken from my wife by the Government agent. I read it, but the contents were of no interest to me.

Q. Did you make any statement that the matters



(Testimony of Emannell Bernard Rosegarten.)  
contained therein were untrue or incorrect, or anything of that sort?

A. There were several——

Mr. Neukom: I object to that, your Honor, because obviously this witness cannot be the final judge of this case. That would be invading the province of the Court and jury, your Honor. The question is ambiguous. There is nothing before the witness. "Were the statements untrue" is obviously such a broad question that it can't be intelligently answered.

The Court: The objection is sustained.

By the Witness:

The statement was not shown to my wife at that same time [84] or some time while I was present—that I remember. I was not shown any other statements at that time.

#### Redirect Examination

By Mr. Neukom:

I did tell you that I would prefer if you would not call my wife as a witness.

Mr. Lavine: May I have an exception to that ruling sustaining the objection to my asking the contents of the statement?

The Court: Very well. [85]

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#### JOAN DAY,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

(Testimony of Joan Day.)

Direct Examination

By Mr. Neukom:

I know Joe Di Marzo. I first met him about the first part of December, 1940. I know Judy Bradford, also known as Helen Merle Beverlin. Government's Exhibit No. 3, for identification is the Judy Bradford I know. I first met Judy Bradford about the same time I met Joe Di Marzo. I believe it was at Joe's house, at 712 South Garland, Los Angeles. I just met her and said, "Hello" to her. I was present in the apartment of Marion Anderson sometime in the month of January 1941, when Marion Anderson was in bed with a broken leg. On that occasion there was present Marion Anderson and Joe, and Judy came in later, and Marion's nurse. It was some time in 1941, I believe. At that time, when she was in bed with a broken leg, Joe introduced me to Marion Anderson.

Q. What did he say, as far as you can remember at this time?

Mr. Lavine: Objected to as irrelevant, incompetent, immaterial, not within the issues of this case. This girl isn't in issue as far as this case is concerned, your Honor.

The Court: This was on the occasion which has just [86] been identified. Is that the question?

Mr. Neukom: Yes, your Honor.

The Court: When Judy Bradford was present?

Mr. Neukom: Judy Bradford was not present at the initial part of the conversation.

The Court: The objection is overruled. You may answer the question.

(Testimony of Joan Day.)

Mr. Lavine: Exception.

By the Witness:

He said he wanted me to meet her, or after he introduced us he said, "Here's a nice little girl, a new girl," or something, and she has never done this before.

Mr. Lavine: Now, if your Honor pleases, I move to strike the answer as highly prejudicial, not within the issues of this case. The reference and the implication from it certainly relate to some other transaction. It has nothing to do with the issues before this Court.

The Court: Objection overruled.

Mr. Lavine: Exception.

The Court: Motion to strike denied.

Q. By Mr. Neukom: Were you a prostitute at that time? A. Yes.

Q. Did you remain a prostitute for a period of time after that? A. Yes.

Mr. Lavine: Now, just a minute, if your Honor pleases [87] I object to the last two questions and move that the answers be stricken so I can have a ruling. It is highly prejudicial misconduct, not relating to the charge for which this defendant is on trial, relating to Helen Merle Beverlin. Whether this girl wasn't a prostitute is not the same transaction. The same transaction is not the one involved in this indictment. It is certainly tending to prejudice this defendant as to other matters irrelevant to the issues in this trial.

The Court: The motion is denied and the objec-

(Testimony of Joan Day.)

tion is overruled without prejudice to renewal of the motion to strike.

Mr. Lavine: Exception.

By the Witness.

In January, 1941, Joe had some conversation with me concerning Judy's going to Honolulu. He said that she and another girl were leaving and that it was very expensive. He had to pay for the tickets for the passage and it was all arranged.

Q. Did he give you any reason why they were going to Honolulu

Mr. Lavine: I object to the question as calling for a conclusion of the witness.

The Court: Overruled.

Mr. Lavine: Exception.

The Witness: He said that she had been over before and could make much more money over there than here. [88]

Q. By Mr. Neukom: Did he tell you what work she was following at that time?

A. He didn't come right out and tell me what it was.

Q. By Mr. Neukom: Did you ever go to work for Joe Di Marzo? A. Yes.

Mr. Lavine: Objected to as irrelevant, incompetent, immaterial, not within the issues of this case. He is not being tried for a State or other offense that can be brought in here. I assign the asking of it as prejudicial misconduct.

The Court: Overruled.

(Testimony of Joan Day.)

Mr. Lavine: Exception.

Q. In what line of work? A. Prostitution.

Q. About when did you start?

Mr. Lavine: Just a minute. I didn't have time to interpose my objection to that last question and to all further questions along this line, your Honor, on the same ground.

The Court: Very well. It may be deemed to be made to each question without repeating specifically the objection or the grounds. The objection to that question is overruled.

Mr. Lavine: Exception noted.

By the Witness:

I started about the first of January, '41. I continued to work as a prostitute about three months. I shared the [89] proceeds from my practice with Joe Di Marzo, all of it.

Mr. Lavine: Is your Honor bearing in mind my objection to all of this?

The Court: Well, yes.

The Court: The objection is overruled. This ruling is without prejudice to a motion to strike.

By the Witness:

I am twenty years of age. I have been to Judy Bradford's apartment at 618 South Detroit Avenue. I don't think I was there before January 25, 1941. I did occupy apartment No. 5 at 618 South Detroit Avenue after Judy Bradford left it for about a month and a half. Joe Di Marzo visited me at the apartment. I did not practice prostitution at that apartment. Joe Di Marzo told me that Judy Brad-



(Testimony of Joan Day.)

ford had gone to Honolulu. I wrote some letters dictated to me by Joe Di Marzo to Judy Bradford in Honolulu. I did not retain copies of the letters that I wrote. I wrote them in my handwriting. I addressed them to Honolulu. I don't recall the address where I addressed them. Joe Di Marzo talked to me about receiving letters from Judy Bradford after she left in January, 1941. Joe Di Marzo asked me to write a letter from him to Judy Bradford in Honolulu. He asked me if I would write the letter. He would tell me what he wanted written, and he said if he wrote that they would probably, or, might check up on his handwriting and he didn't want his handwriting in it. I don't remember if [90] I signed the letter "Joan" or what I signed it. I discussed, in the letters, about the weather, it was just impersonal things. Joe never told me as to whether or not reference to the word "weather" had any meaning, but some of the things that she wrote meant something else. He said that to me. He said something like "the weather is cold down here" or "I can't get out very much"; "I am sick" or something, meaning that business wasn't very good. I am reciting now what Mr. Di Marzo told me. About the weather, and just little impersonal things that had different meanings. "The weather is cold" or something like that meant that she wasn't feeling well or that she wasn't working and wasn't getting very much, or something. I don't know. I think I wrote two letters. Joe told me to write the second letter. I wrote in his dictation. I saw Judy Brad-

(Testimony of Joan Day.)

ford sometime around about Easter, that is, in the month of April 1940, in Los Angeles. That was at Joe's house, at 712 South Garland, it was in 1941. It is the same year following the broken leg of Marion Anderson. At that time, there was present Joe and Judy and myself and, I think, two other girls were there. At that time I was shown Traveler's Checks or there were Traveler's Checks displayed in my presence; but not while anybody else was there, just Joe and I were there. Joe, he said he was mad and wanted to beat up on her because all she brought back was \$500 and she hadn't been working. She didn't work over there and she [91] played around with the Kanakas, or something.

I saw the Traveler's checks. They were in hundred dollar denominations. I saw that there were five of them. They were in the hands of Joe Di Marzo.

I am not presently a prostitute.

#### Cross Examination

By Mr. Lavine:

I went to work for Mr. Di Marzo in January 1941. I knew him around in December 1940. I had been in Los Angeles prior to that time. I had been living here for about a month. I moved into this apartment at 618 South Detroit Street about the middle of January. When I moved in there was not anyone else living in there. I didn't see Judy Bradford when I moved in there. She had already gone. I brought my personal things there to the apartment. There were a number of things of Judy Bradford's

(Testimony of Joan Day.)

there. I don't know if all her clothes were there. I didn't see them. The closet was locked. I talked to the landlady of that apartment house. She told me that she had locked Judy's clothes up. Joe told her to. Joe told her to lock the door of the closet, and she didn't tell me she locked it. She was right there with Joe and I when it was locked. The closets were not locked when I moved in. I did not see Judy's clothes there. They were in one closet, Mine were in another, and I didn't even open up the door to look. I didn't open up the door to look in the closet that Judy's [92] clothes were in. They were too small for me.

I think two letters is all I wrote to Judy Bradford. I don't remember the first letter I wrote. I think I addressed the envelope to "Mrs. Judy Bradford." I addressed the envelope somewhere in Honolulu, I don't know the address. It was a short letter. The first letter was about a week, two weeks, after I moved into this apartment. I wrote the second letter about two weeks after that. In the second letter I said the same thing as I said in the first, practically. I don't really remember. I remember everything. But I don't remember what was in a letter. I wasn't that much interested in it. I wrote the letter in the apartment.

I first met Mr. Di Marzo at his apartment. He was laid up with a bad leg. He was living at 712 South Garland. That is the apartment court. He had his own apartment there. He wasn't over at 618 South Detroit at the time I met him because

(Testimony of Joan Day.)

I just met him over there just casually. He told me that I could live at this place. He didn't say "for a short time." He said that was my apartment, and everything in there, except her clothes, was mine if I wanted them. I didn't have a cent personally. Prior to moving over to 618 South Detroit I was living on 724 Oakwood. I never had any conversation with Judy Bradford about her going to the Island. Judy Bradford never told me that she was going to the Island. Mr. Di Marzo told [93] me that she was going to the Island. There was present myself the first time, and he just talked about it to everybody—Manny and Gail and— This was either in a car or over at the place where I was working or over to his house.

I was not arrested in Delano for prostitution. I was never arrested. As to whether I was taken into custody by the authorities at Delano—but I wasn't arrested.

When I was in the Superior Court in Department 45 of the Superior Court in the case of *People vs. Di Marzo*, I remember seeing Joseph Di Marzo in the courtroom or just outside the courtroom. Mrs. Fairchild being a detective from the Los Angeles County District Attorney's office was present. There was also present two of the other girls that were in the same case. I don't know what date it was. I remember being in the court in the latter part of 1941, in Department 45 of the Superior Court in the Hall of Justice across the street there in the custody of Mrs. Fairchild; Mrs. Fairchild being



(Testimony of Joan Day.)

present and it being just outside of the courtroom of Judge Clarence Kincaid and that Mr. Di Marzo was also present—I do remember that occasion.

As to whether I remember having an argument with Mr. Di Marzo because of my detention—I have never had an argument with him on things like that, I mean, since he has been taken in and since I have been testifying. He has [94] always said, “How are you,” and “Hello,” and that is all I have said to him. That is all I said outside of that courtroom at that time, because they wouldn’t let us talk to—what do you call them?—witnesses, or something.

I was in custody about eight months.

As to whether at that time and place in talking to Mr. Di Marzo I did not say, ““If it hadn’t been for you, this would never have happened to me””?—No, I never said that to him.

I go by several other names.

#### Redirect Examination

By Mr. Neukom:

I was being held then as a material witness. The “Manny” I referred to, was Manny Rosegarten.

#### Recross Examination

By Mr. Lavine:

As to whether I had a conversation with Mr. Di Marzo and Mrs. Fairchild about Mr. Di Marzo’s helping out the Los Angeles County District Attorney’s office in their investigation in which I was being held—— All I could say was, “Hello, how



(Testimony of Joan Day.)

are you.” They wouldn’t let us talk intimately with him unless she was there. And he would never say anything except, “How are you getting along” and “What are you doing.” I did not tell Mrs. Fairchild if it hadn’t been for Di Marzo that I wouldn’t be held as I was.

I remember about a month prior to this date that I was [95] in the Superior Court that I was taken to the house of Grant Cooper, the Chief Deputy District Attorney of Los Angeles County. I remember Mr. Di Marzo being there at that time. I was then in custody, brought there in custody. I do not remember on that occasion stating to Mr. Di Marzo in the presence of the persons present there, Mrs. Fairchild and Mr. Grant Cooper, and possibly one or two investigators from the District Attorney’s office, that Mr. Di Marzo had brought about this situation that I found myself in. I did not make a statement to Mr. Cooper at that time, because Mr. Cooper was hardly even in the house. It was all the other ones talking to us. All I did was to talk to Joe, and he lit my cigarette once.

As to whether I made any kind of statement to the Deputy District Attorney—I don’t think so. I am not sure. I don’t think I made any statement. We talked, I mean, we talked about different matters and everything; but I don’t think I made a statement. The only statement I made was up in the District Attorney’s office. I made a statement in the District Attorney’s office. I made a state-

(Testimony of Joan Day.)

ment to the District Attorney when I first got in there.

### Redirect Examination

By Mr. Neukom:

When I was in custody for about eight months, we had a beautiful apartment. I was kept in an apartment by the District attorney of Los Angeles County, not the Federal District Attorney. [96]

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### DAVID GOODSELL

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

### Direct Examination

By Mr. Neukom:

I was employed by the Matson Navigation Company, commencing May 10th, 1939. At that time I was on the Monterey. I was working as a bartender on the S. S. Lurline on the voyage sailing from Wilmington on January 24th or 25th, 1941. During the course of that voyage I met Judy Bradford or Helen Merle Beverlin.

Government's Exhibit No. 3 for identification is a picture of the Judy Bradford I met on that voyage. I took this picture.

(The document referred to was received in evidence and marked Government's Exhibit No. 3.)

(Testimony of David Goodsell.)

This other picture, Government's Exhibit No. 4 for identification, with the bridge going across to Oakland on the back of it is a picture of myself and Judy Bradford. That was taken on the promenade deck of the Lurline, about the 14th of April, 1941, on the return voyage of the Lurline from Honolulu.

As to Government's Exhibit No. 5 for identification—I took that picture. The woman to the left who has the hat on is Judy Bradford. I don't know the name of the other [97] girl who was there. That picture was taken at the same time and place—On April 14th, 1941, or thereabouts, on the return voyage of the Lurline. I was a bartender then.

(The documents referred to were received in evidence and marked Government's Exhibits Nos. 4 and 5).

Upon the trip to Honolulu I met and talked to Judy Bradford. I sold her drinks, and talked to her and became acquainted with her. I was aware of the fact that she did land in Honolulu at the conclusion of that voyage commencing on or about January 25, 1941. I saw her several times on the Islands.

While I was on the Islands I went to a place known as the Palace Hotel. There I met Judy Bradford.

Q. Did you have sexual relations with Judy Bradford?  
A. Yes.

Mr. Lavine: Just a minute, if your Honor please. I object to that as irrelevant, incompetent, im-

(Testimony of David Goodsell.)

material. A single act of immorality or sexual relations would be immaterial. Besides it isn't what happened subsequent. It is the intent with which the debauchery was alleged to have occurred.

The Court: Objection overruled.

Mr. Lavine: Exception.

By the Witness:

I had sexual relations with her. There were other girls in attendance at that Palace Hotel. [98]

Q. Other prostitutes? A. Yes.

Mr. Lavine: Now, just a minute. That is assuming a fact not proved here, that she was engaged in prostitution at that time or that there were other girls who were prostitutes. It calls for a conclusion of this witness.

The Court: The question is, Whether other girls were in attendance at the hotel. The witness said, "yes," and then he said, "were they prostitutes?"

Mr. Lavine: That calls for a conclusion of this witness.

The Court: The objection is overruled.

Mr. Lavine: Exception.

By the Witness:

They were prostitutes. I paid Judy Bradford a fee of three dollars in return for the intercourse had upon the occasion that I went to the Palace Hotel. That act was between the time I first met her and the time that she returned on the Lurline some time in April of 1941. In April 1941, I saw Judy Bradford when she docked at San Francisco.

(Testimony of David Goodsell.)

She got on the boat in Honolulu some time in April of 1941, and she accompanied the boat all the way over to San Francisco, and docked in April of 1941. I saw Judy Bradford that same night at the St. Francis Hotel. She received a telegram that evening. I did not see the telegram.

### Cross Examination

By Mr. Lavine: [99]

I met Judy Bradford on the boat going over. It was around the 24th of January, 1941. I served her drinks. She wasn't drinking constantly on the trip to my knowledge. I only saw her once on the trip going over the first night out. That was the only night that I served her with drinks. After I got over to the Island, I was on Island Oahu. I didn't go to the Palace Hotel to meet her. I had shore leave for a while from the boat. I was on the Island for two days. I did not take Judy out. I did not make an appointment to meet her at any time that I was to come back there on that trip. It was sometime later, several trips later. I didn't look her up. I can't remember the exact date I saw her on the Island after that. I think it was in March. I did not take her out then. I did take her out socially while I was on the Island. I took her to several bars. She had several drinks while she was there at these different bars. I took her to dinner on one occasion. I did not talk over with her the matter of coming back on my boat. I did not tell her when I was going to sail. On the same



(Testimony of David Goodsell.)

trip in April of 1941, I met her on the ship coming back. At that time I did not make love to her. I did not discuss the possibility of marriage with her. It is not a fact that when I got back here I telephoned to my mother and asked her for money to marry someone. I phoned my mother, but I don't remember asking her for \$1,000. I don't remember telling my mother that I intended to marry Judy Bradford. [101] I did propose marriage to Judy Bradford. I did not propose marriage to her on that trip back. I proposed marriage to her in San Francisco after I returned. Judy Bradford got off in San Francisco. I stayed on the ship, and the ship continued to come on to Los Angeles. I didn't get married to Judy Bradford after I had made this proposal to her. I didn't tell my mother I was going to marry Judy Bradford. I told her I was going to get married. Her name wasn't mentioned, to the best of my memory. Judy was right there at the time I phoned. Then I came on to Los Angeles on the Lurline. I saw Judy in Wilmington the day we got in there. She did not come on the boat. She came down on the train from San Francisco. At no time did I ever see Mr. Joseph Di Marzo. He was not on the boat at any time. I didn't ever see him in Honolulu. When my boat docked at Wilmington I didn't see him there. Government's Exhibit No. 4 was taken before the boat docked. It was out in the bay. That is a picture of Judy and I. I believe this was taken the same day as my proposal of marriage to her. This picture was taken the same time the other

(Testimony of David Goodsell.)

picture was taken. They were all taken the same day. Judy had some drinks after we arrived at San Francisco. She had probably three with me. I did not notice how much luggage Miss Bradford had when she came back on that trip. I did not visit her state room in the ship. I did not come to the Biltmore Hotel after I left the ship. I did not come into [102] Los Angeles. My ship pulled out that afternoon. Miss Bradford was not there at Wilmington when the ship came in. She came aboard the ship while the ship was in Wilmington.

#### Redirect Examination

By Mr. Neukom:

I did not know that Miss Judy Bradford was at the Palace Hotel upon the occasion that I testified to when I went up there. I didn't know it until I got up there.

#### Recross Examination

By Mr. Lavine:

I was on the boat until November 24th, 1941. Then I was off for three months, and I returned and I got off again June 8th, 1942. As to whether Miss Bradford accompanied me again sometime in the latter part of the spring of 1941 back to the Hawaiian Islands—I don't think she did. If she did I didn't see her on the ship.

## HELEN MERLE BEVERLIN

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Neukom:

My name is Helen Merle Beverlin. I am also known as Judy Bradford. I am acquainted with Joe Di Marzo. I am twenty-four years old. I was born in Pleasonton, Kansas. I have known Joe Di Marzo around four years. [103]

I recall having gone to Honolulu on the Lurline, and having returned from Honolulu also on the Lurline sometime in April, 1941.

Before that trip I had been following prostitution. I worked for several different people. As to whether I ever worked for Joe Di Marzo—I don't know if you consider it working for a person.

Q. Had you shared the proceeds that you received from practicing prostitution with Joe Di Marzo in a period before January 25th, 1941?

Mr. Lavine: I object to that as calling for another offense not charged in this indictment.

The Court: Objection overruled.

Mr. Lavine: Exception. Too extensive and not within the issues of the case.

The Witness: Yes.

Q. By Mr. Neukom: And for how many months or years before January 25th, 1941, had you shared the proceeds you received from prostitution with Joe Di Marzo?

Mr. Lavine: Same objection.

(Testimony of Helen Merle Beverlin.)

The Court: Overruled.

Mr. Lavine: Exception.

The Witness: Well, I can't remember exactly, but it's about, maybe three or four years. I am not sure.

By the Witness:

I am not married and never was married to Joe Di Marzo. [104] During the last four or five years I had not practiced any occupation other than prostitution.

I first met Joe Di Marzo in my apartment in Los Angeles about four years ago. I know Marion Anderson. I am aware of the time she had a broken leg and was in bed. That was before I sailed to Honolulu in January of 1941. I was not residing in the same apartment building that Marion Anderson was residing in in January 1941. During that time I was living on Detroit Street. I don't recall the exact apartment number. It was a back apartment. That was 618 South Detroit. I was not practicing prostitution at that time at that place. I think that it was on Normandie where I did practice prostitution. I am not just sure of the month. It was before I sailed for Honolulu.

Q. And during that period before you sailed for Honolulu did you share the proceeds that you received from practicing prostitution with Joe Di Marzo? A. Yes.

Mr. Lavine: Objected to as irrelevant, incompetent, immaterial, not within the issues of the case.

The Court: Overruled.

(Testimony of Helen Merle Beverlin.)

Mr. Lavine: Exception.

By the Witness:

I couldn't say how much money I was making a day during the period of January, 1941.

Mr. Lavine: May I have a running objection to all this [105] testimony, your Honor?

The Court: Yes, it may be understood that you have an objection to any and all questions relating to the acts and conduct of this witness prior to January 24th, or whatever date that is, 1941.

Mr. Lavine: Exception noted.

By the Witness:

I didn't keep track of it. I gave a part of my earnings to the proprietress, Marion Anderson. I don't know what proportion—just for room and board. I gave just a portion of my earnings to Joe Di Marzo. I don't know how much. I didn't keep track of that either. I was practicing prostitution at Bakersfield in December, 1940.

I had occasion just a little before New Years to be present when Joe Di Marzo, Irene Adams, also known as Mrs. Manny Rosegarten, and Manny Rosegarten came to Bakersfield. I saw those parties. During that occasion I gave Joe Di Marzo a stack of bills. I really don't know how much was there. It was around \$100.00. That money was obtained from prostitution. I can't recall giving Joe Di Marzo some money on one occasion in Marion Anderson's apartment while she was suffering from a broken leg. I can't recollect doing it. I do not



(Testimony of Helen Merle Beverlin.)

recall ever giving Joe Di Marzo some money in the presence of Marion Anderson at any other time.

I have worked as a call girl. That is when a call comes in on the telephone for a girl to go some place. In meeting [106] the calls as a rule sexual intercourse was had for a consideration. The monies I received from that type of work, I shared with Joe Di Marzo.

Q. For how many years or months before January of 1941 do you recall that you worked as a call girl?

Mr. Lavine: I suppose my objection is still running?

The Court: Your objection is still good; same ruling and same exception.

The Court: When I say "Your objection is good" I mean to say that it is deemed to have been made.

By the Witness:

I don't know just exactly. I didn't work as a call girl very long. I worked both as a call girl and also in an apartment, at different addresses. Before I went to Honolulu in January 1941 I had some conversation with Joe Di Marzo about his giving me money to make that trip. I couldn't recall exactly just how long before it was. It might have been two weeks. I am not sure of the exact date. That I wanted to go to Honolulu was practically the conversation. I needed some money to go on. At that time he did not owe we any money. He did give me some money. Enough for my ticket and some over. I don't remember what the ticket

(Testimony of Helen Merle Beverlin.)

was. It must have been around \$200.00. I first bought a first class ticket. I think I had the ticket changed. I got a refund when I was on the boat. On this photostat from Government's Exhibit No. 1 for identification where [107] the "X" is, "J. Bradford," is my signature. I received a ticket under the name of "Mrs. Judith Bradford." That appears to be a photostatic copy of the ticket I received.

(The document heretofore marked as Government's Exhibit No. 1 for identification was received in evidence.)

I sailed on the Lurline. I met one David Goodsell, a bartender on the boat. While at Honolulu I went to live or stay or work at the Palace Hotel. While I was staying at the Palace Hotel I was practicing prostitution. I had occasion upon at least one time to have professional sexual intercourse with David Goodsell, for which I was paid a fee.

Q. By Mr. Neukom: Did you practice prostitution at the Palace Hotel for at least or approximately one month? A. Yes.

Mr. Lavine: Now, just a moment, if your Honor please. When happened on the Island subsequent to the transportation alleged in the indictment is irrelevant, in competent, immaterial. I object to it on that ground.

The Court: Objection overruled.

Mr. Lavine: Exception.

Q. By Mr. Neukom: Did you continue to practice prostitution for the whole period of time that

(Testimony of Helen Merle Beverlin.)

you were over there on the trip that commenced January 25th, 1941?

Mr. Lavine: Same objection, your Honor. May I have a running objection on that ground and also that there is no [108] connection shown as to the charge here on trial?

The Court: You may have your running objection. The objection is overruled and exception will be deemed to be noted.

The Witness: Yes, practically all the time.  
By the Witness:

I worked at the Palace Hotel all that time. I do not know approximately how much money I would take in gross a day. I returned from Honolulu sometime in April 1941, and sailed back on the Lurline. David Goodsell was on that boat. I docked in San Francisco. I recall that David Goodsell took some pictures of another girl and I when I returned from Honolulu on the boat. Particularly in the harbor right off San Francisco.

When I arrived in San Francisco in April 1941 I went to the St. Francis Hotel. Mr. Goodsell and I were together for some of that evening. While I was there I think I sent a wire to Joe Di Marzo in Los Angeles. I probably told him that I had arrived. I received a reply. I received a wire from Los Angeles.

Q. Whose name appeared on the wire?

Mr. Lavine: Just a minute. Objected to as not the best evidence.

(Testimony of Helen Merle Beverlin.)

The Court: Objection overruled.

Mr. Lavine: Exception. [109]

By the Witness:

The name on the wire was "Joe." And "Joe" was the name that I gave to Joe Di Marzo or that I called him. The next day I went to Los Angeles by train. I arrived in Los Angeles around night time. I called up Joe Di Marzo when I arrived in Los Angeles. I talked to him. I guess it was him I talked to.

Q. And the number you called at that time, was that his number where he was living?

Mr. Lavine: Objected to as calling for a conclusion of the witness. She had been away three months.

The Court: Objection overruled.

Mr. Lavine: Exception.

By the Witness:

I called his home when I called him up, and talked with him on the telephone. I said I had just gotten off of the train, and he said, "Come over to the apartment." I took a cab to the apartment of Joe Di Marzo. It was on Garland. I think 712 South Garland was the correct address. There was a person present there by the name of George Reed. Joe Di Marzo was there. I think we conversed about something. I don't recall the conversation. I talked to him practically the evening, after I had arrived. Before I left Honolulu on this trip I had gone to the bank and purchased

(Testimony of Helen Merle Beverlin.)

around \$500.00 worth of traveler's checks. The money that I used to purchase those traveler's checks I had gotten [110] working at the Palace Hotel as a prostitute. When I arrived in Los Angeles on the train and went to Joe Di Marzo's apartment I had \$500.00 left in traveler's checks. I am not sure of what denominations they were. After my arrival on the evening in question when I went out to his place on Garland I did offer to Joe the traveler's checks. I don't really recall just how soon it was. I don't know whether it was that same evening or the next day. I did give those traveler's checks to Joe Di Marzo. I don't recall just when it was. It was possibly within a week or two after I returned. I did accompany or have Joe Di Marzo accompany me when I went to a bank on either West Sixth Street or West Seventh Street. At that time I had with me the \$500 worth of traveler's checks I had purchased in Honolulu. I signed them and had them cashed. I received in return Five Hundred Dollars. I gave it to Mr. Di Marzo. At that time I did not owe Joe Di Marzo anything.

Q. Now, with respect to a trip that you took to Honolulu—had you gone to Honolulu in August of 1940, that is to say, prior to this trip in January of 1941?

Mr. Lavine: Objected to as irrelevant, incompetent, immaterial, not within the issues of this case,

The Court: Objection overruled, without prejudice to a motion to strike.



(Testimony of Helen Merle Beverlin.)

Mr. Lavine: Exception. [111]

By the Witness:

I had made another trip. I am not sure just what the date was.

Q. And had you returned on that first trip sometime in October of 1940?

Mr. Lavine: May I have a running objection to this former trip which is now referred to, your Honor?

The Court: On the grounds previously stated with relation to the other questions and previous activities.

Mr. Lavine: That is correct.

The Court: You may have your objection. The ruling will be the same, and exception noted.

By the Witness:

I returned in October or thereabouts, 1940. I had been back in the States about three months, or thereabouts, before I made this second trip in January, 1941. When I was over there on the first trip, (the one in 1940), that was my first trip to Honolulu—while I was over there in 1940 I had practiced prostitution. Before I went on the first trip in 1940 I had been practicing prostitution and sharing the proceeds that I received from customers with Joe Di Marzo—that is, here in the States. [112]

## JOAN DAY,

called as a witness by and on behalf of the Government, having been previously duly sworn, was examined and testified further as follows: (This witness was recalled at the request of the defense.)

## Cross Examination (Resumed)

By Mr. Lavine:

(Mr. Lavine requests the witness to address and write out in her handwriting just the way that she addressed the letter that she said she addressed to write out in her handwriting just the way that she remembers, and the way she signed it, on a piece of paper that he placed before her.)

By the Witness: I don't remember how I addressed the envelope. I think it was "Mrs. Judy Bradford."

(The witness writes.)

By the Witness:

I don't remember where I addressed the letter in Honolulu. I don't remember what name I possibly signed it. It could have been "Joan." It wasn't "Joe", I know. It could have been some fictitious name. I don't really remember. At that time I was going by the name of Renee Taylor.

(Mr. Lavine requests the witness to write "Renee Taylor.")

(The witness writes.)

(Mr. Lavine requests the witness to write anything that she remembers that was in the first letter that she sent her.)

(The witness writes.)

(Testimony of Joan Day.)

Mr. Lavine: (Reading)

“Dear Judy: How are you? How is your friend? Tell her to drop me a line if she has time.” [113]

By the Witness:

I believe that was in my first letter. Practically the same thing was in the second letter. The second letter was about two weeks after the first letter. I hadn't received a reply to any letter at that time, or at any time. I did get mail at 618 South Detroit Street addressed to me, but not from Honolulu. I did see mail at 618 South Detroit Street from Honolulu about the middle of January. It was received in the afternoon. It was addressed to “Mrs. Judy Bradford, 618 South Detroit” to herself. She addressed it, and Joe went and opened the box. I said, “Here's a letter to Judy.” He says, “No, it is for me.” I read it. I saw the letter, and it said, “Mrs. Judy Bradford, 618 South Detroit, Los Angeles, California.” I saw it in the afternoon. I did not say anything to anyone about this letter. If I remember correctly, I think I read the first one. He let me read it or read parts of it. I don't remember now whether I read it or whether he read it. I don't really remember.

Mr. Lavine: I offer this specimen of handwriting as Defendant's first in order.

(The document referred to was marked “Defendant's Exhibit A”, and was received in evidence.)

By the Witness:

I am sure now that this letter was addressed to

(Testimony of Joan Day.)

Judy Bradford at 618 South Detroit Street. [114]

I first took the name of "Joan" after I left Joe. I didn't take the name of "Joan" until some time in 1941. I took it before April, 1941. It was just before Easter..

*Redirect Examination*

By Mr. Neukom:

The letter that was received from Judy Bradford in Honolulu was received after she sailed in January. I went into her apartment in the first part of January, 1941. I don't know the date that she did sail. When I state that the letter was received in the middle of January, 1941, from Honolulu, I am not positive as to that date. It possibly could have been in the month of February. It was around then, I don't remember.

Q. Well, now, you state that you don't remember precisely what you wrote in the letter, as I understand your testimony; but you have some recollection that you wrote a letter for Joe Di Marzo wherein you state "How is your friend? Tell her to drop me a line if she has time." Joe told you who that friend was? A. Yes.

Q. What had he told you?

Mr. Lavine: Just a minute, now. I object to that as irrelevant, incompetent, immaterial, not proper redirect examination.

The Court: Objection overruled.

Mr. Lavine: Exception. [115]

The Court: Noted.

(Testimony of Joan Day.)

By the Witness:

He had told me that that was Viola. I had seen Viola once at Gail's and Manny's apartment. Joe had told me something concerning Viola's going to Honolulu. I do not recall the date when Joe told me anything about Viola. It was about two weeks before I had moved into the Detroit apartment. It was at 624 or 644 Oakwood. That was Gail's and Manny's home. There was present Gail and Manny Rosegarten, and Joe and Viola and another girl and myself.

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HELEN MERLE BEVERLIN,

called as a witness by and on behalf of the Government, having been previously duly sworn, was examined and testified further as follows:

Redirect Examination (Resumed)

By Mr. Neukom:

I am also known as "Mrs. Judith Bradford", or "Judy Bradford". Upon my trip to Honolulu in January of 1941, someone did accompany me in my same cabin or stateroom on that trip.

Q. What was the name of that person?

Mr. Lavine: Just a minute. I object to that as irrelevant, incompetent, immaterial, not within the issues of this case, not within the indictment as alleged.

The Court: Does this go to the matter of intent of the defendant? [116]

Mr. Neukom: That is right.



(Testimony of Helen Merle Beverlin.)

The Court: The objection is overruled.

Mr. Lavine: Exception noted.

(The following remarks were made at the bench, outside the hearing of the jury:)

Mr. Lavine: The defendant objects to the introduction of evidence relating to, purporting to relate to other girls and other transactions not alleged in the indictment as violative of the Fifth Amendment to the Constitution of the United States requiring and providing for due process of law to be accorded to each defendant charged with a criminal offense and depriving him of that notice and opportunity to meet a charge that is properly alleged in the indictment and producing evidence also that is not properly a part of the particular charge, and, therefore, irrelevant, incompetent, immaterial to the issues on trial and prejudicial to the defendant.

The Court: The objection is overruled.

Mr. Lavine: Exception noted.

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(The following proceedings were had in the hearing of the jury:)

The Witness: The name was Dianne Stevens. I think her other name was Viola.

Q. By Mr. Neukom: Did you ever know whether or not Viola had worked for Joe Di Marzo as a prostitute? [117]

Mr. Lavine: Object to that as calling for a conclusion of the witness; irrelevant, incompetent, immaterial, not within the issues of this case.

(Testimony of Helen Merle Beverlin.)

The Court: Objection overruled.

Mr. Lavine: Exception.

The Witness: Well, I don't know about working for him as a prostitute.

By the Witness:

I have testified here that Joe Di Marzo gave me about \$200 to buy my ticket and other expenses to Honolulu on this trip in question.

Q. Did he also give you any money to buy a ticket for any other person?

Mr. Lavine: Objected to as irrelevant, incompetent, immaterial, not within the issues of this case.

The Court: Overruled.

Mr. Lavine: Exception.

The Witness: No, he didn't give me any money to buy a ticket for any other person.

Q. By Mr. Neukom: In your presence did he give to any other person, any other girl, money to buy a ticket to Honolulu?

Mr. Lavine: Same objection.

The Court: Same ruling.

Mr. Lavine: Exception.

The Witness: I can't recall just whether he did. I [118] think, to the best of my recollection, that there was one other person that was given money.

By the Witness:

I did have some talk with Joe Di Marzo before I set sail when I talked about Viola sailing to Honolulu with me. That was about a week before I sailed to Honolulu.

(Testimony of Helen Merle Beverlin.)

Q. By Mr. Neukom: Well, was that prior to your sailing in January of 1941?

Mr. Lavine: Same objection, your Honor.

(The previous objection was on the grounds of being leading and suggestive.)

The Court: Overruled.

Mr. Lavine: Exception.

The Witness: Yes.

By the Witness:

That was about a week, perhaps two weeks before. I am not sure where the place was, I think it was here in Los Angeles. I believe Joe and I were the only ones present.

Q. Well, then, what did you say, if anything, with regard to Viola? Or what did Joe say?

Mr. Lavine: Objected to as irrevelant, incompetent, immaterial, not within the issues of this case.

The Court: Overruled.

Mr. Lavine: Exception.

By the Witness:

I think I suggested that she go along because she was [119] a friend of mine and that I would like for her to go. I can't recall the conversation that came up. I had already purchased my ticket.

Q. Did you at any time see Joe Di Marzo give any other girl any money to purchase a ticket to go to Honolulu?

Mr. Lavine: Objected to as irrelevant, incompetent, immaterial.

(Testimony of Helen Merle Beverlin.)

Q. By Mr. Neukom: Give any other girl money around about January, 1941?

Mr. Lavine: I object to that as immaterial, irrelevant, incompetent, not within the issues of this case.

The Court: Overruled, without prejudice to a motion to strike.

Mr. Lavine: Exception.

The Witness: Well, I can't truthfully say I can remember seeing him give any other girl the money.

By the Witness:

I did have some conversation with Joe Di Marzo in the month of January, 1941, with regard to the fact that another girl had decided not to go to Honolulu.

Q. Now, relate that conversation.

Mr. Lavine: I object to that as irrelevant, incompetent, immaterial, not within the issues of this case.

The Court: There is no foundation laid. Otherwise the objection is overruled.

Mr. Lavine: Exception. [120]

By the Witness:

I guess it was around two weeks before purchasing the ticket. To the best of my memory, the young lady was present, Mr. Di Marzo and myself. I can't recall the name of the other young lady exactly. All I know her by is Dolly.

Mr. Lavine: May it be understood that I have a running objection to this?

(Testimony of Helen Merle Beverlin.)

The Court: Yes, it may be understood you have an objection to the entire line of questioning.

Mr. Lavine: On the grounds they are irrelevant, incompetent, immaterial.

The Court: The ruling will be the same and an exception will be noted to each one.

By the Witness:

The conversation came up that she had someone, a relative of some kind, that was in the Navy, I believe, in Honolulu, and perhaps it wouldn't be wise for her to go. I remarked that I didn't think it would be wise for her to go either. I can't recall just all the conversation. It's been quite some time. She had already purchased her ticket, and I suggested that the girl known as "Viola" go, because she was a friend of mine and I wanted her to go. Before that conversation I had been present with Dolly and Joe when there was discussion about Dolly and I going to Honolulu. I don't recall just where it was. It was in Los Angeles. I can't recall the exact time. It must have been [121] maybe two weeks before—it was before the purchasing of the tickets.

Q. At that time when you and Dolly and Joe were present—did you see Joe give to Dolly any money?

Mr. Lavine: Objected to as irrelevant, not within the issues of this case.

The Court: Overruled.

The Witness: Well, I can't recall seeing him actually give her the money.



(Testimony of Helen Merle Beverlin.)

By the Witness:

He gave me some money at that time. He gave me enough money to purchase my ticket. I was present when Dolly purchased a ticket.

Q. Do you recall whether you purchased her ticket or whether she purchased it from monies that she had?

Mr. Lavine: Object to that as irrelevant, incompetent, immaterial, not within the issues as alleged in the indictment.

The Court: Overruled.

Mr. Lavine: Exception.

(The following remarks were made at the bench outside the hearing of the jury:)

Mr. Lavine: I object to the introduction or presentation of any testimony relating to the purchase or use of a ticket or tickets as being a separate and distinct offense under the Act and not alleged, however, in this particular [122] indictment.

The Court: Objection overruled.

Mr. Lavine: Exception noted.

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## JOAN DAY

recalled as a witness by and in behalf of the Government, having been previously sworn, was examined and testified as follows:

### Redirect Examination (Resumed)

By the Witness:

About two weeks before January 25, 1941, I was

(Testimony of Joan Day.)

introduced to a person by the name of "Viola" by Joe, at Gail's and Manny's on Oakwood, in Los Angeles.

Q. Then after you were introduced—what did Joe tell you when he introduced you? Just relate what was said, if anything.

A. Nothing. He just introduced me.

Mr. Lavine: Objected to as incompetent, irrelevant, immaterial, not within the issues of this case.

The Court: Overruled, without prejudice to a motion to strike.

Mr. Lavine: Exception.

By the Witness:

He said, "Joan, I would like you to meet Viola." That is all he said. Later on, on that occasion, I talked to Joe with respect to Viola. After I came back later that evening I asked him where he got that old bag from. He said that [123] she had called him a couple of nights ago or the night before, or something, and said her name was Viola, and that she had heard that he was a very prominent man and that he had very pretty girls, and she wanted to come to work for him. He says, "All right, you come on over." He says, "Let me take a look at you. Let me meet you."

Mr. Lavine: May I interpose an objection to all this as incompetent, irrelevant, immaterial to the issues on trial here.

The Court: The same ruling. Overruled.

Mr. Lavine: Exception.

(Testimony of Joan Day.)

Mr. Lavine: I have a continuing objection, your Honor?

The Court: Yes.

Mr. Lavine: Exception noted.

By the Witness:

So he brought her over to the house, and he said that she was so terrible looking he wouldn't even think of keeping her as one of his girls here in town. But he said he could send her over to Honolulu with Judy at the same time Judy went and that he could still get money from her. That is all in January, 1941. That was before Judy Bradford sailed for Honolulu.

#### Recross Examination

By Mr. Lavine:

This conversation that I related did not take place in August, 1940. I could have been in September, 1940. I met [124] Joe in December, 1940, and I had been here just about a few weeks, maybe a month before. It could not have been in 1941 that this took place (in August of 1941), not if she sailed with Judy on January 25th.

Q. Well, now, Judy sailed in August of 1941 to Honolulu. Could that conversation have taken place then?

A. But she didn't sail in August.

By the Witness:

I know that, because I wasn't working for Joe in August. I don't really have any recollection of the

(Testimony of Joan Day.)

dates of the conversation, but I know the months, but I don't know any of the dates.

I was taken into custody the last part of July. I didn't hear at the time that I was taken into custody and while I was in custody that Judy was then in Honolulu. I mean there was rumors about everything, and I don't really know because I hadn't seen Joe for some time then.

I asked Joe where he got that old bag. That was what I said. I never saw her again after that night. I only saw her on the one occasion.

### Redirect Examination

By Mr. Neukom:

I went to work for Joe in December of '40. I quit in '41; right after Easter in April. I talked to Joe about Viola on more than one occasion other than the time when I met her. I talked to Joe about Viola's trip to Honolulu [125] upon more than one occasion. The other time besides the one that I have related was at 712 South Garland, Joe and I were present—it was about a few days before they sailed in January. Joe said that Judy told him that she didn't think Viola was going to give Joe all her money because Joe wasn't treating her right, wasn't buying her all the things that he bought his girls and said that she was only going to give him half. And Joe said that he was telling Judy to work on Viola so he could get all of the money.

## HELEN MERLE BEVERLIN

previously called as a witness by and in behalf of the Government, having been previously duly sworn, was examined and testified as follows:

## Redirect Examination (Resumed)

By Mr. Neukom:

Q. Now, Judy Bradford, did Viola, or Diane Stevens in fact sail with you on the Lurline on or about January 25, 1941, for Honolulu?

Mr. Lavine: Objected to as irrelevant, incompetent, immaterial, not within the issues of this case.

The Court: Overruled.

Mr. Lavine: Exception.

The Witness: Yes, I believe that is the correct date.

By the Witness:

She was the same Viola that had been with me when I had had a conversation with Joe Marzo a couple of weeks [126] before I sailed. This Viola or Dianne Stevens did not ever sail with me again, so far as I know, on any other trip to Honolulu.

Q. Now, when you arrived in Honolulu did Viola or Dianne Stevens accompany you to the Palace Hotel?

Mr. Lavine: Objected to as incompetent, irrelevant, immaterial, not within the issues of this case.

The Court: Overruled.

Mr. Lavine: Exception.

The Witness: Yes. We went to the Palace Hotel,

Q. By Mr. Neukom: Did you observe whether



(Testimony of Helen Merle Beverlin.)

or not, within a short period after you had arrived in Honolulu in the year 1941, Viola went to work as a prostitute?

Mr. Lavine: Objected to as called for a conclusion of this witness as to what Viola did.

The Court: I think she is qualified as an expert. Objection overruled.

Mr. Lavine: Exception.

By the Witness:

She worked in the same place I did. Before the trip of January 25th, 1941—I had been working here in the States for Joe Di Marzo, sharing the proceeds of my earnings with him.

Q. Now, had you ever made a previous trip to Honolulu in the year 1940? Just "yes" or "no."

Mr. Lavine: Objected to as irrelevant, incompetent, [127] immaterial, not within the issues here.

The Court: Overruled.

Mr. Lavine: Exception.

The Court: Subject to a motion to strike if it is not connected up.

Mr. Lavine: And the previous question, your Honor, I didn't reserve my objection to that on her sharing the earnings. I object to that and move to strike the answer as incompetent, irrelevant, immaterial, not within the issues here.

The Court: Motion denied.

Mr. Lavine: Exception.

The Witness: I can't remember the correct dates, but I made a previous trip.

Q. By Mr. Neukom: Was it in the year 1940?

(Testimony of Helen Merle Beverlin.)

A. Yes, I believe so.

Mr. Lavine: May I have a running objection to all these these three trips so that I won't have to interrupt counsel?

The Court: In order that your record may be clear, it is understood that you will be deemed to have objected to all questions which relate to any activities of this witness or any other person or of the defendant prior to January 24, 1941.

Mr. Lavine: And also subsequent, your Honor. There will probably be some testimony elicited along that line.

Well, I will stand on that objection at this time, [128] with the exception noted.

Q. By Mr. Neukom: Well, now, on this previous trip to Honolulu in 1941 do you recall what month it was you had returned to California from that trip?

The Court: So that your objection will be clarified, your objection will go to all testimony which comes under the general heading of similar transactions.

Mr. Lavine: That is right.

The Court: Either before or after.

Mr. Lavine: Exception noted.

The Witness: I can't recall exactly, but I believe it was around October. I am not sure.

Q. By Mr. Neukom: 1940?

A. I believe so.

(Testimony of Helen Merle Beverlin.)

By the Witness:

To my best recollection I sailed for Honolulu around September, 1940. I had been over there around two, maybe two and a half months. It was possibly from the late summer until sometime in October, 1940.

Q. Well, incidentally, before I go into that, you made more money gross practicing your trade in Honolulu than you had made here in the States per day?

Mr. Lavine: I object to this as calling for a conclusion.

The Court: Objection overruled.

Mr. Lavine: Exception.

The Witness: Yes. [129]

By the Witness:

There was a great difference between one trip and the other when I would work each day as to the amount I would average. On my first trip in the fall of 1940, I had averaged \$30.00 to \$50.00 a day gross, working in Honolulu. After I returned until I went on my second trip I had averaged, from practicing my trade here in the States, around fifteen, twenty per day, gross. I made more money in Honolulu than I did here.

Q. Before you left on your first trip to Honolulu, sometime in either the late summer or fall of 1940, prior to that had you been working for Joe Di Marzo and sharing the proceeds of your earnings with him? Do you understand the word "prior"? I will use the word "before." Before that had you been working for him?

(Testimony of Helen Merle Beverlin.)

Mr. Lavine: I object to that as not within the issues of this case.

The Court: Overruled.

Mr. Lavine: Exception.

The Witness: Yes.

Q. By Mr. Neukom: As a prostitute?

Mr. Lavine: I assign the asking of it as prejudicial misconduct, as relating to another alleged offense, not alleged in this indictment and referring only to state transactions.

The Court: Overruled.

Mr. Lavine: Exception. [130]

A. Yes.

By the Witness:

Before I left on my first trip in the fall or late summer of 1940 I did talk to Joe Di Marzo about going over there. I don't recall just where. It was in Los Angeles. I can't recall whether anyone was present or not.

Mr. Lavine: Is my objection still running, your Honor, on this?

The Court: Yes.

By the Witness:

Mr. Di Marzo gave me the money to buy my ticket. That was my first trip to Honolulu. I don't recall the exact amount he gave me. I imagine it was around two hundred, two hundred fifty dollars. I myself bought my ticket. Before I went on my first trip to Honolulu in 1940 Joe Di Marzo did not owe me any money. While I was over in Honolulu on my first trip

(Testimony of Helen Merle Beverlin.)

for two or three months there, I practiced prostitution in Honolulu. I did not do anything else for money other than that. When I returned I brought back money on my first trip. When I returned in October of 1940, I saw Joe Di Marzo shortly after I returned. I saw him in Los Angeles, I believe. I can't recall just where it was on that first trip. I do not recall what name I went by when I traveled on the steamer on the first trip. I gave Joe Di Marzo money when I got back from my first trip in 1940. I recall having given to him about \$900.00. All [131] that money had been derived from practicing prostitution. I had made more money than that while I was over there. I paid my expenses back and other expenses while I was over there from money I had made practicing prostitution.

#### Recross Examination

By Mr. Lavine:

I was living at 618 South Detroit Street in 1940 and 1941 under the name of Bradford. I have gone by the name of "Taylor." It could be possible that I was living at that address under the name of "Judy Taylor." I used several different names, and it's kind of hard to recall.

I couldn't identify this handwriting (indicating). I did receive mail at the Palace Hotel in Honolulu. I was known at the Palace Hotel as "Lani Nevins." I picked that name out myself. I don't remember when I did, whether it was on the boat or when I arrived or what. I didn't give my name to anyone in California before I had used it in Honolulu that I re-



(Testimony of Helen Merle Beverlin.)

member. That was the name that I used all the time that I was in Honolulu. That is what other people knew me by over in the Islands. Before I left in January, Mr. Di Marzo and I had quarrelled once in a while.

I remember an occasion when I first saw a girl, who called herself "Joan Day." I don't remember the exact date. I remember seeing her. I don't remember that on that occasion I was very much upset because I saw Joe Di Marzo with [132] her. Chances are I might have been upset. I don't recall crying about it. I might have. I don't remember having a conversation with Mr. Di Marzo after I saw him with Joan Day in which I told him that I was going away. It seems as though after that episode I moved out of my apartment, and then I moved back in again. I moved out of my apartment for one night, and I moved back in again. I believe it was on Detroit Street. On that occasion I probably mentioned to Mr. Di Marzo that I was going to go away. I wanted to return to Honolulu. I wanted to return to Honolulu on my own accord. I wanted to return to Honolulu. That was because I myself wanted to go. It wasn't because of anything Mr. Di Marzo told me to do. He didn't want to me go to Honolulu. He told me once he would rather I didn't go. He told me he did not want me to go to Honolulu.

Q. Didn't you have an argument about the subject when he told you that he didn't want you to go to Honolulu, that you were doing all right in the United States?

(Testimony of Helen Merle Beverlin.)

A. Yes. And I wanted to return.

Q. And you told him that in spite of anything that he said or did you were going back, didn't you?

A. That's right.

I don't recall the correct time, but I had worked in Bakersfield. I had made around \$200.00 while I was working in Bakersfield, just before I went to Honolulu.

I testified on direct examination that I received calls. I did not always make as much as \$25.00 and \$50.00 a call. I had several calls, though, during the month of January in [133] addition to my trip to Bakersfield. As to whether I had been working in a hotel in Bakersfield for a period of about eight or ten days, just before sailing—I don't know just how long I had been there.

Q. And you had turned over this money to Mr. Di Marzo to hold for you, hadn't you?

A. Yes. I had given it to Mr. Di Marzo .

Q. By Mr. Lavine: In January of 1941 you had turned over approximately \$200 to Mr. Di Marzo, isn't that right?

A. I don't know whether it was "approximately." I don't think it was that much.

I was working during the entire period of January, 1941, practically all of it. I had worked in the hotel in Manhattan Beach. I don't recall just when I worked there, but I worked there. From January 1, New Year's of 1941, until approximately January 24, 1941, I had been working practically steady during the entire period of time. During that period of time

(Testimony of Helen Merle Beverlin.)

what I averaged per day varied. Fifteen twenty, it always varied. I can't say approximately because every day was different.

The system was; the girl would work, and she would divide her money with the person that ran the rooming house. The balance, usually it would be given to someone else. I gave mine to Mr. Di Marzo.

Q. Well, when you went to Mr. Di Marzo in the latter part of January and you told him that you wanted to go back [134] to Honolulu, you knew then that he was holding or had or had received more money from you than you were asking him for the trip, isn't that right?

The Witness: I am not sure whether it was mine. I knew that I had given him money.

Q. By Mr. Lavine: Well you knew that you had given him more money than you were asking for you to take this trip, didn't you? A. Yes.

It was my own personal desire to make that trip. There was nothing that Mr. Di Marzo did do to have me go on that second trip. It was my own personal desire to go. That was because I had been at the Islands before. I liked it over there, and I wanted to go back again. [134-a] Mr. Di Marzo told me that he would rather have me stay here. I went down to the ticket office and purchased the ticket myself. Mr. Di Marzo was not along when I did that. I don't recall just how much luggage I took. The morning that I left I don't recall who called the taxicab. I wasn't alone. Mrs. Morgan, the landlady might have been around. I might have said to Mrs. Morgan at that time to lock

(Testimony of Helen Merle Beverlin.)

up my closet, that I had some clothes there that I wanted locked up. No, the closets were locked. I had quite a number of things there. I left some clothes. I don't recall how much clothes I left. I didn't take a lot of clothes. I had my closet locked up there. I think it was locked. I don't know whether I said to Mrs. Morgan that I was going to take a little trip up north to see my mother. A cab came and I got in the cab and went to the boat. Mr. Di Marzo didn't accompany me.

I think at that time he had a Cadillac automobile. I had ridden in his automobile on many occasions. He didn't drive me or transport me to the boat. I got my cab and went from my apartment on Detroit Street to the Lurline. Mr. Di Marzo didn't see me off. He didn't accompany me to the boat. As to whether, after I got on the boat, I changed my ticket from a first class to a second class ticket—I don't remember. I get my trips a little confused. I know I changed my ticket once, but I don't remember whether it was this trip that I changed tickets or not. [135] I made three trips to the Islands. Mr. Di Marzo had nothing to do with the other trip—the third trip. I came back from the third trip in November of this year, November of 1941. I believe that is correct. I went over to the Island on that occasion of my own accord also. That was because I wanted to go over there. I bought my ticket for that occasion myself also. I stayed over at the Island and came back of my own accord.

When I was over in the Island on my second trip, at no time did I ever send Mr. Di Marzo any money



(Testimony of Helen Merle Beverlin.)

from the Island. At no time did I ever receive any money to come back from that trip from Mr. Di Marzo.

Prior to my taking the second trip and prior to my taking any of these trips Mr. Di Marzo and I were friends. As to whether he had at one time proposed marriage to me—that was brought up several times. We didn't get married. Before I left in January I may have had a discussion with him in which I had asked him to marry me. I don't remember whether he said, "No," at that time.

I know where Mr. Di Marzo's apartments are. His apartments are Courts.

I don't recall seeing Mr. Di Marzo over there at the time I asked him for the money for the trip and singing "Thanks for the memories." I can't recall that I was going to leave and go away and had no intentions of coming back. My intentions were probably for returning. I don't even [136] remember the conversation about that or singing or humming or anything.

When I went down and bought a ticket I only bought a one-way passage. That must have been the ticket I bought under the name of "Bradford." If it was the second trip, I am sure it was "Bradford" that I used. I don't recall the name that I used the first trip, or the third trip.

Somebody questioned me in Honolulu regarding some investigation here in Los Angeles. I did not receive a request to come back to Los Angeles. The Chief of Police from Honolulu did not interview me



(Testimony of Helen Merle Beverlin.)

and ask me to come back. I did receive a letter from someone in Los Angeles, a man other than Joe Di Marzo, asking me to come back to Los Angeles. That was from a man by the name of Mr. Cherkoff, or something like that. No one told me to come back. I didn't receive a letter from anyone telling me to come back. I received a letter from someone asking me if I would return. It was personal, my own personal business. That was the third trip.

When I was over there during the second trip I did have a little trouble on the Island. I was told to leave the Island of Oahu. I had my trouble on the Island of Oahu. I left there. I Went to the Island of Hilo. I didn't come back to the United States. When I got back to the United States, I got off in San Francisco. I had met someone on the trip, coming back. That man's name was Mr. Goodsell. [137] As to whether I had a romance with him—I don't know whether you would consider it exactly a romance. He was a pretty good freinds of mine. He did proposition me to marry him. He proposed to me. I accepted his proposal for a while. I had some photographs taken with him. After I got off the boat I did not make plans to get married in San Francisco while I was in San Francisco, nor did Mr. Goodsell. In San Francisco I was not present when he telephoned his mother. In San Francisco I did not hear any conversation between him and his mother with reference to marrying me. I later came down here and met him at Wilmington. I went to the boat. When I came down from San Francisco I came down on the train.

(Testimony of Helen Merle Beverlin.)

I don't know just exactly what date it was, that I arrived from Honolulu. My return trip on that occasion: That was my own desire too. Nobody had asked me to come back on the second trip. Nobody had asked me to send any money from Honolulu. The second trip is when I came from Hilo to Honolulu. From Honolulu I returned back to California. This ticket that I bought from San Francisco to Los Angeles on the train, I paid for that myself.

Q. By Mr. Lavine: Well, at no time did Mr. Di Marzo cause you to go to Honolulu, did he?

Mr. Neukom: That is calling for a conclusion of the witness, and also upon the grounds it has been asked and answered.

The Court: Sustained, as calling for a conclusion of the witness. [138]

Mr. Lavine: Exception.

Q. By Mr. Lavine: At no time did Mr. Di Marzo cause you to return from the Island, did he?

Mr. Neukom: Well, I think, your honor, it is still a conclusion of the witness.

The Court: It is. Sustained.

Mr. Lavine: Exception.

By the Witness:

At no time did Mr. Di Marzo buy my ticket either way. I remained in Hawaii on the first trip that I took around two months. During the time that I was there I had to pay my living expenses. I lived in the Palace Hotel. I lived there as well as worked there. The custom there is the same as it is here, that you

(Testimony of Helen Merle Beverlin.)

share half of the proceeds of your earnings with whomever operates the hotel. Naturally I had other expenses. I would have taxicab fares to pay. I didn't keep track of it. Very seldom I ever went out to a night club. I had to pay for my room and board at the hotel. I paid that by the day. I think it was around \$3.00 per day. Two and a half, three dollars; three dollars fifty cents, or three dollars it was for my room. It was for my room and board. The other expenses I would have were expenses most anyone would have, buying clothes, and expenses that other human beings would have. I left with one suitcase on my second trip, and came back with four, and I happened to have needed a set of luggage; so I bought a set of luggage [139] I bought it in Honolulu.

Q. By Mr. Lavine: You always considered yourself a free agent to go wherever you pleased, regardless of anything Mr. Di Marzo might say or do, haven't you?

Mr. Neukom: I think, your Honor, that that calls for the conclusion of the witness as to what is a free agent. And I think that the facts, as pertain to this case, is a matter that is to be decided by the jury. I object on that ground.

The Court: Sustained.

Mr. Lavine: Exception.

By the Witness:

When I went to Bakersfield in January 1941, I went up there of my own accord. That was my own idea to go there. It was my own idea to come back and go to Honolulu. I wanted to go to Honolulu.

(Testimony of Helen Merle Beverlin.)

Q. There was nothing that Mr. Di Marzo could have said or done to have stopped you, was there.

A. I don't think so.

Mr. Neukom: Your honor, I object to that as being already asked and answered. The question is vague, too obscure. It doesn't place any particular time. It is unintelligible.

The Court: Sustained.

Q. By Mr. Lavine: Well, there was nothing that Mr. Di Marzo could have done in January, 1941, when you decided to make your trip to Honolulu, to have stopped you; was there?

Mr. Neukom: I object to that, your Honor, on the ground it is a conclusion of the witness.

The Court: Sustained.

By Mr. Lavine: Q. He did try to stop you, didn't he?

Mr. Neukom: I object to that upon the ground it has been asked and answered.

The Court: Sustained.

Mr. Lavine: Exception to the ruling on the last three questions.

The Court: You may have your exception.

By the Witness:

I have gone to other states on my own accord, at different times since I have known Mr. Di Marzo. I have traveled to different towns—that has been of my own accord.

I have received money from Mr. Di Marzo, that is, received money that I have turned over to him, re-

(Testimony of Helen Merle Beverlin.)

ceived it back. I have received money when I asked for things.

Q. By Mr. Lavine: Do you remember on December 4, 1940, Mr. Di Marzo gave you a \$100 check?

Mr. Neukom: I will stipulate that he did and that it bears her signature on the back, if you are willing to accept my stipulation.

Mr. Lavine: All right, I will accept the stipulation. I introduce that in evidence. [141]

(The Document referred to was marked Defendant's Exhibit "B" and received in evidence.)

By the Witness:

When I was first questioned about this matter and talked to the agents of the Federal Bureau of Investigation, I denied that Mr. Di Marzo had ever sent me or caused me to be sent to Honolulu.

I think I know Mr. George Stahlman. I remember that prior to your coming into the case he represented Mr. Di Marzo. I remember telling George Stahlman that at no time did Mr. Di Marzo ever send me over to Honolulu or cause me to be sent. I remember that I was arrested on the charge of conspiracy to cause my transportation to the Islands. I remember that the Government then put one witness on the stand—I believe it was Mr. Tyler here—and he gave his name, and then they rested their case. I was acquitted.

As to whether, after that, I was taken into the office and questioned at length—I can't remember



(Testimony of Helen Merle Beverlin.)

it. I did tell the F. B. I. agents before that proceeding that Joe Di Marzo had never given me any money. I do not remember the date of that. I can't remember talking to anyone in the F. B. I. prior to the day that I was in Court. I had to come to Court that day. I was told to be in Court. After I was in Court I went to my attorney's office. Mr. Cooper was my attorney. I did not come back to the Federal Building that day. I don't recall just exactly when, but it would seem [142] to me like it was some time after that when I came back to the Federal Building. I am not sure of the date.

I first talked to the Government agents about this case in the F. B. I. Building, I believe, at Fifth and Spring. I talked to Mr. Tyler. There might have been one other person present.

As to whether, on that occasion, I denied that I had ever given \$500.00 to Mr. Di Marzo—I denied everything. I saw Mr. Tyler again at my apartment. I don't recall just what date it was. It might have been a couple of weeks after the first time. There was a young lady I was living with was present, I think. Her name is Mrs. Coleman.

As to whether, on that occasion, I again denied to Mr. Tyler that I had received any money from Joe Di Marzo to make any trip—I denied everything when I wasn't under oath. I denied everything he asked me. I can't recall just which was the next time I saw Mr. Tyler.

(Testimony of Helen Merle Beverlin.)

Q. When was the first time that you changed your story from a denial?

Mr. Neukom: I object to that, your Honor, as assuming something that is not in evidence. And it is argumentative with this witness.

This witness has testified that she denied everything. Counsel has never attempted——

The Court: Argumentative. *Objection* sustained.

Q. By Mr. Lavine: Well, you lied to Mr. Tyler every [143] time you made these denials, didn't you?

Mr. Neukom: I object to that, your Honor. After all, that is for the Court and jury to ultimately determine. It is a conclusion of the witness as to whether or not she is a liar, and I think the jury are the best persons to judge that.

The Court: It is argumentative, counsel. *Objection* sustained.

Mr. Lavine: Exception.

Q. By Mr. Lavine: You were really telling the truth to Mr. Tyler, then, weren't you?

Mr. Neukom: Same objection.

The Court: Sustained.

Mr. Lavine: Exception.

By the Witness:

I don't recall whether Mr. Tyler took my statements down in writing or not. I have signed one statement, I believe. I don't know whether it was for Mr. Tyler. I signed one statement when I came down and gave my own statement. Someone

(Testimony of Helen Merle Beverlin.)

did not come to my apartment and take me down to the Federal Building. They did not call me up. I came down from my mother's, up in Boquet Canyon. I am now living at my mother's. That is my permanent address. I have been staying down here. I am staying at the Rosslyn Hotel. I have been staying there since the trial has been going on. Prior to that time I was staying at my mother's.

[144]

I have been held under a bond here. I have asked the Government from time to time if I could go to San Francisco. I believe I asked once if I could go. I have been around Los Angeles most of the time or in the city here.

When I came back the second time from Honolulu, I had traveler's checks. I might have had a little cash, very little. I couldn't recall just what amount it would be. I might have had cash. I am not sure just what name these traveler's checks were made out to. Maybe it was "Judith Bradford." I think they were cashed about three weeks after I came home. They weren't cashed immediately after I came home. I don't think it was as long as two or three months before they were cashed, but I couldn't say for sure. It was some time. I gave Mr. Di Marzo the traveler's checks, I believe, the night I got in from San Francisco. I am not positive about it, whether it was that night or the next day. It was one of the two.

I had not been drinking so particularly heavily on my return from San Francisco. It is a fact

(Testimony of Helen Merle Beverlin.)

that when I came down here that I wanted to go home to see my mother and that I cashed a check so that I could get my cab fare to go out to my house. I could have done that. It seems like—yes. I might have cashed one traveler's check. I think I cashed one traveler's check. I don't recall whether I used the money to go up to my mother's place or not. I didn't cash the other checks for some time after that night, [145] or after the next day. I cashed those checks at the bank on, I think it was, Seventh Street near Garland. There was \$500.00 in checks. I signed them all. I don't know what denominations they were. I think they were mostly in either fifties or hundreds. I can't remember just what they were.

When I was on the Island during the second trip I went swimming. I didn't go out socially very much. I enjoyed the Islands,—they were very nice. I enjoyed living on the Islands. I like to live there. It was more or less because I enjoyed living on the Island that I went there. I met a lot of people over there. I met quite a few men, but none that I became particularly interested in.

In my profession over there I was making \$3 a customer. That was the standard price that I received from all the customers. I can't recall whether I received the same price when I was working at Huntington Beach, California, or when I was working at Bakersfield. Perhaps, occasionally, I received \$5 and \$10 per customer at Bakers-

(Testimony of Helen Merle Beverlin.)

field. It is possible I received \$5 and \$10 per customer at Huntington Beach. I don't remember whether I received \$5 or \$10 per customer in Hawaii. There was never any set standard price, to speak. Prostitution is not licensed in Hawaii that I know of. I had an entertainer's license. As far as prostitution being licensed, I don't know about that. I paid a dollar for my entertainer's license. [146]

I went to a doctor of my own free will. Naturally, that would be an expense. The doctor charged. I don't remember what the doctor's expense per week was. I went to see a doctor usually once a week. I don't remember just what the expense was or for the different reasons that I went. I don't really remember whether it was a requirement of the place where I was working or not. I worked when I pleased on the Island.

As to whether there was an order of the Chief of Police that I could work only between certain hours of the day—I really couldn't say. I didn't see an order like that.

It is not a fact that I was ordered to leave Oahu because I was working after the hours which the Chief of Police had put into effect as the time within which women could work there.

Q. By Mr. Lavine: Had you violated certain orders of the police department of Honolulu while you were there on your second trip?

Mr. Neukom: I object to that as calling for the conclusion of the witness, and upon the further



(Testimony of Helen Merle Beverlin.)

ground that it is immaterial to the case here, upon the issue of transportation. And I further can say that in all probability prostitution is violating orders.

The Court: It is immaterial. The objection will be sustained.

Mr. Lavine: Exception. [147]

By the Witness:

I worked at the occupation of prostitution in Honolulu on my second trip there as many hours per day as I pleased. I didn't have any certain hours. I didn't have any certain schedule that I worked on. Some days I worked when I pleased and other days I didn't work. I was actually over on the Island during my second trip perhaps around two months. It took me about five days to travel each way. Going over, I didn't engage in my occupation as a prostitute on the boat, that I can remember. I traveled second class to the best of my memory.

After I got over there it was about three days before I began to engage in my occupation. I don't remember how many days of this period of time I didn't work. I didn't keep any record. Perhaps I worked about half the time.

When I came back on the boat I met David Goodsell. I don't remember whether I had met him before then or not. Perhaps I met him on the trip before. He might have paid me a visit. He was a bartender on the boat on my return trip. That is where I met him. After I met him and came

(Testimony of Helen Merle Beverlin.)

back to the United States; I recall having some pictures taken on the boat. I don't recall whether it was before or after he proposed marriage to me. When I started to San Francisco I don't remember Mr. Goodsell telephoning his mother. I do not remember standing right there at the telephone while he talked to his mother. Perhaps I had [148] been drinking in San Francisco. I probably was drinking. I don't remember just what I was drinking. It was probably a variety. I was drinking alcoholic beverages.

I don't recall whether I ever showed these traveler's checks to Mr. Goodsell. I don't remember whether I ever showed anybody those traveler's checks before I got to the United States. I couldn't say for sure what bank I purchased those checks from. It might have been the Bank of Hawaii. I don't remember how many times I signed my name when I bought the checks. I think I signed by name when I bought the checks. I don't remember. When I got to the bank at Seventh and Garland Street where I cashed the checks, I think I went to a window there. The bank looked like like it might have been a branch. I think the teller asked me for some identification. I probably produced some. I think the checks were under the name of "Helen Beverlin", I wouldn't swear to it. I probably had some identification on me under the name of "Helen Beverlin". I don't remember what denomination the checks were. I can't re-

(Testimony of Helen Merle Beverlin.)

member whether I cashed more than one immediately after I got to Los Angeles.

As to whether when I was working at Huntington Beach—I was earning between \$250 and \$300 per week—I don't remember the exact amount. I never had it long enough to pay much attention to it. I don't remember whether it was \$250 or \$300. It could have been that amount.

As to whether when I was working in Bakersfield I was [149] earning \$250 to \$300 per week there—I don't remember just what my earnings were. I wouldn't say whether it could have been that amount or not.

After I got back from Hawaii on my second trip I didn't immediately resume my previous occupation. I don't remember whether there was a month or two months there when I didn't do any work at all. All my bills and living expenses were paid. Mr. Di Marzo was paying them. I don't think those expenses ran between four and five hundred dollars a month, but I wouldn't swear to it. I did not necessarily feel that I had a legal obligation to pay that money back, for my expenses. I did not particularly feel that I had a legal obligation to pay that money back, for my expenses. I did not particularly feel that I owed that money. I didn't feel that the money that he was advancing for those living expenses then should be repaid.

As to whether, from time to time, I went to different places because I myself wanted to go to those different places during the years that I knew Mr. Di Marzo—sometimes I went because I wanted

(Testimony of Helen Merle Beverlin.)

to go and sometimes I didn't. I went to Phoenix, Arizona, because I wanted to go. Sometimes I have gone to Bakersfield because I wanted to go, and other times I went because Mr. Di Marzo wanted me to go. I preferred Los Angeles to any place, just because Los Angeles is a larger town. I like to live in a larger town, that is all.

As to whether I recently asked the F.B.I. if I could go to San Francisco—I didn't see anything wrong in that. [150]

I believe it was here I had those proceedings in the Federal Court in which I was acquitted that I made a statement to Mr. Tyler. I don't remember just when I made my statement. That was not because Mr. Tyler and other agents had told me that if I didn't make a statement to them that they would harass me wherever I worked. No statement like that was made to me by an F.B.I. agent. It is not a fact that that was because of fear of prosecution that I made the statements to the F.B.I. that I have made. I have never been afraid of prosecution in that matter. Mr. Tyler did not say that they were going to try me and simply acquit me so that I could make a statement without fear of prosecution. That statement was not made to me at any time. Mr. Di Marzo did not accompany me on the second trip or any trip to Hawaii. I never saw Mr. Di Marzo at any time that I was on the Island. As far as I know, during the four or five years I have known him, he has never been on the Hawaiian Islands.

(Testimony of Helen Merle Beverlin.)

Redirect Examination

By Mr. Neukom:

I have never taken any checks from customers in this business; only very seldom. I can't recall ever taking one, but once in a while there was one taken. More or less the business was on a cash basis. When I would give Mr. Di Marzo my earnings, as I had been practicing my profession, he did not keep a record that he gave to me, as a sort of [151] bank book and showed me how much credit I had with him. He never gave me a receipt for any monies that I gave to him.

Q. You testified under cross-examination in response to a question by Mr. Lavine that you might have made \$250 or \$300 down at Huntington Beach—per week down at Huntington Beach, but you never had it long enough to pay any attention to it. Why didn't you?

A. Because I gave it to Mr. Di Marzo.

Mr. Lavine: Objected to as calling for a conclusion. Irrelevant, incompetent, and immaterial.

The Court: Overruled.

Mr. Lavine: Not proper redirect examination. I move to strike.

The Court: The motion is denied.

Mr. Lavine: Exception.

Q. By Mr. Neukom: After you would make your money from your business about on an average per week how often would you turn it over to Mr. Di Marzo?



(Testimony of Helen Merle Beverlin.)

Mr. Lavine: Objected to as not proper redirect examination.

The Court: Objection overruled.

Mr. Lavine: Exception.

The Witness: That would all depend upon when I would see Mr. Di Marzo. It would be maybe once a week or twice a week.

Q. By Mr. Neukom: Did Mr. Di Marzo inquire of you [152] as to how many customers you had had during that period that you had been working?

The Court: Which period are you talking about?

Q. By Mr. Neukom: During the period when you were working here in Los Angeles between your first and second trip?

Mr. Lavine: Objected to as irrelevant, incompetent, immaterial, too indefinite, not proper redirect examination.

The Court: Overruled.

Mr. Lavine: Exception.

The Witness: Well, he would never inquire particularly as to the customers. It would be more the inquiry as to the business, whether it was good or bad. If it was good, it meant there was enough customers. If it was bad, why there weren't many customers.

By the Witness:

When I was working for Marion Anderson up on Normandie, in the month of January, 1941,—I have seen Mr. Di Marzo in the apartment. I can't recall any conversation asking about the number of customers. As to whether Mr. Di Marzo

(Testimony of Helen Merle Beverlin.)

ever, during that period of time, in January of 1941, inquired of me as to whether or not I was turning over to him all of my earnings—there has been some doubt about that once in a while, whether I was. I wouldn't swear to this at all. I think he checked with Mrs. Anderson to make sure that I was giving him the correct amount. [153]

Q. Did Mr. Di Marzo ever say to you in the year 1940, between your first trip and second trip, anything as to what would happen to you if you didn't turn over to him your monies?

Mr. Lavine: Now, just a minute. I object to that as irrelevant, incompetent, immaterial, improper questioning, improper redirect examination.

The Court: How is that question opened up?

Mr. Neukom: I think it is opened up upon the field that this women apparently, from Mr. Lavine's questions, is shown to have been a free agent, that she could do as she pleased.

The Court: Objection overruled.

Mr. Lavine: Exception to the ruling.

The Witness: I can't recall him actually ever saying what would happen to me.

By the Witness:

After my second trip, when I got back around Easter of 1941 I was a little tired from having been over at the Island. From my experience, a woman cannot practice prostitution day in and day out, week in and week out, without some rest. It is a pretty trying ordeal. In the summer after my second trip and I had come back to California I

(Testimony of Helen Merle Beverlin.)

was in the hospital for a while. After that, before I went over to the Islands on the third trip, I wasn't on speaking terms with Joe Di Marzo for a while. I had some trouble [154] with him.

Q. By Mr. Neukom: Did Joe Di Marzo ever injure you after your return from your second trip?

The Witness: Yes.

Mr. Lavine: Objected to as irrelevant, incompetent, immaterial, not within the issues of this case. And I assign the asking of the question as prejudicial misconduct and ask that the question be stricken and the jury admonished to disregard it. It is an attempt to introduce some matters that certainly have no relation to transportation or causing to be transported. It is remote.

The Court: As I recall, there was considerable interrogation before we adjourned yesterday about this on cross examination, about this witness' third trip.

Mr. Lavine: That is correct.

The Court: And her going to Honolulu voluntarily.

Mr. Lavine: That is correct.

The Court: The objection is overruled.

Mr. Lavine: But nothing has been asked on cross examination which would open up any questioning along this line, your Honor.

The Court: The questions that were asked yesterday were directed to her as to whether or not Joe Di Marzo sent her or she went there of her

(Testimony of Helen Merle Beverlin.)

own free will on the third trip, which in my judgment opens up the question which the United States Attorney is now touching upon. [155]

Mr. Lavine: No. He is about to ask something that may involve another alleged offense not charged in this indictment and not a part of the issues here and beyond the scope of the cross examination and, certainly, improper redirect examination. I assign the asking of the question as highly prejudicial.

Mr. Neukom: The free agency angle, too, is one that I wish to urge, your Honor. It has been attempted to be brought out here, as I said before, that this women has always been a free agent.

The Court: The objection is overruled. Well, to keep the record straight, Mr. Lavine's motion will be deemed to be a motion to strike, in view of the fact that it came in after the answer, and the motion to strike will be denied and the exception granted to the ruling.

Q. By Mr. Neukom: And about how long after your second trip?

Mr. Lavine: Same objection, your Honor.

The Court: Same ruling. Exception granted.

A. Well, I couldn't say for certain but I think it was about, perhaps a month after my return. I wouldn't swear to a certain date.

Q. What did he do to you?

A. Broke my jaw.

Q. Were you in the hospital as a result of that?

(Testimony of Helen Merle Beverlin.)

Mr Lavine: I object to the last question and make a [156] motion to strike on the last answer, your Honor.

The Court: On the same ground previously stated?

Mr. Lavine: Yes.

The Court: The same ruling. In order to prevent you from the burden of repeating each time, it will be deemed that you have objected to the entire line of questioning of the United States Attorney which relates to any incidents occurring after her return from Honolulu on the so-called second trip and before her third trip, unless there is some additional ground which occurs to you and, perhaps, to that particular question.

By the Witness:

Yes, I was in the hospital for about two weeks. After that in the fall of that year I went to Honolulu again. I paid my own way on that trip.

Mr. Lavine: I object to all these questions as leading.

The Court: Well, they are all leading.

Mr. Neukom: Very well.

The Court: But I don't think that is sufficient grounds to strike them from the record.

Mr. Lavine: Exception.

By the Witness:

When I went to Bakersfield in December of 1940, Joe sent me up there. When I went to Manhattan Beach, and worked there, Mr. Di Marzo sent me there. I thought Manhattan and Huntington were



(Testimony of Helen Merle Beverlin.)

the same thing. Huntington has [157] been the one that there was reference to. I never worked in Manhattan. When I went to Huntington Beach, Mr. Di Marzo sent me there.

When I went to Huntington Beach, I gave the monies that I earned from practicing prostitution to Mr. Di Marzo. When I worked in Bakersfield, I gave the monies that I had earned from practicing prostitution to Mr. Di Marzo.

Q. It was brought out on cross-examination that you liked the Hawaiian Islands?

A. Yes. I also liked Los Angeles, and California.

Referring to a check in the amount of \$100 from Joe Di Marzo, dated December 4, 1940; On the back of which it says, "Judy Beverlin" and "O.K. J. Di Marzo." I don't remember to whom, if anyone, I gave this money after I had received this check. I don't even remember receiving the check. I cashed checks from time to time for Joe Di Marzo. I have gone to the bank and got checks cashed for Mr. Di Marzo. As to whether I recall whether or not I have ever received a check from Mr. Di Marzo and gone down to the bank at Seventh and Garland and Joe Di Marzo would okay my signature—I can't recall about the signature. I did it so seldom that I don't recall the procedure of it. I recall having given the money back to Mr. Di Marzo after I had cashed the checks.

Mr. Di Marzo did buy me clothes, and he bought me a coat. He has taken me out and wine and

(Testimony of Helen Merle Beverlin.)

dined me. And Mr. Di Marzo has ridden me in his beautiful Cadillac car. [158] But I also for about four years had given him everything I have made. I do not feel that I owe Mr. Di Marzo anything now. I still like Mr. Di Marzo. I am testifying here today because I am under bond and compelled to testify. I didn't want to testify. I told you on August 14 of 1942 that I preferred not to testify. You have not made me any promises at all in conjunction with my testimony on this case. Mr. Tyler has not made me any promises at all.

I don't know whether you would consider me his pal, but I don't dislike Mr. Di Marzo. Mr. Di Marzo has, upon some occasions, offered or suggested marrying me. I don't recall whether before I left on the trip in question, the second trip, and went to Honolulu he offered to marry me then.

Q. By Mr. Neukom: Mr. Lavine interrogated you with regard to your comments to Mr. Tyler or the F.B.I. agent before you made the complete statement, and you stated that you denied everything. Now, as a matter of fact, Miss Bradford, when you talked to Mr. Tyler in the spring of this year what did you tell him?

Mr. Lavine: Now, just a minute. I object to that as not proper redirect examination. She said she denied everything.

Mr. Neukom: Obviously, your Honor, denying everything is a matter which was a conclusion of the witness. I think I have a right to inquire.

(Testimony of Helen Merle Beverlin.)

The Court: The matter was opened up on cross examination, Mr. Lavine. The United States Attorney has a right to inquire if he desires. The objection is overruled.

Mr. Lavine: Exception.

By the Witness:

I told Mr. Tyler my name and a few other little questions he asked. And then I refused to answer any of the other questions. In the spring or early summer of 1942, I also refused to answer anything. I recall appearing before the Grand Jury. I stood on my constitutional rights. I refused to testify.

#### Recross Examination

By Mr. Lavine:

As to whether the quarrel that I had with Mr. Di Marzo about a month or two months after my return was occasioned by the fact that I wanted to go back to the Island, and he told me that he did not want me to go back to the Island—I really never could understand what the quarrel was actually about.

As to whether there had been some pictures taken of me with some Hawaiians—I took a lot of pictures.

As to whether there was a further discussion in which I said I wanted to go back to the Island, and Mr. Di Marzo said, “I told you I didn’t want you to go to the Island, and I don’t want you to go back to the Island”—Mr. Di Marzo didn’t want me to go. I don’t recall that he said [160] it right

(Testimony of Helen Merle Beverlin.)

at the time when that happened. He had said that he didn't want me to go.

As to whether there had been some discussions about some of the things that I had been doing over in the Island—Well, there had been discussions and mostly, I think, it was caused because I wanted to leave Mr. Di Marzo. I didn't want to be with him. I don't know whether I would have gone to the Island. I just wanted to leave him.

I was taken into technical custody by the District Attorney's office of Los Angeles County. When I came back from Honolulu the third time, Mr. Di Marzo was at my mother's house. He wasn't with any investigators. He was by himself up there. I had telephoned my mother, and he had just called up about that time, and he came up to my mother's house. When I drove up to my mother's, Mr. Di Marzo was up there. He told me that investigators from the District Attorney's office wanted to talk to me. He told me he wanted me to come back and testify for him. He told me that he wanted me to come down and talk to investigators from the District Attorney's office. He wanted me to talk to the District Attorney.

Two men from the District Attorney's office picked me up in my hotel when I was walking in the lobby. I think this is the Los Angeles County District Attorney. Other than that occasion, since that time, I saw Mr. Di Marzo in Sacramento. It was just after I went up to the District [161] Attorney's office. I haven't seen Mr. Di Marzo since

(Testimony of Helen Merle Beverlin.)

he was put in the concentration camp. I had seen Mr. Di Marzo when he came into town just before they put him in, about two days before they put him in the concentration camp, but I haven't had any personal contact with him. I haven't been out socially with him or talked to him or worked for him.

I got back from Hawaii on my third trip either early in November or just before November, 1941. I saw Mr. Di Marzo the day after my boat docked from the third trip to Honolulu. I went up to my mother's and he was there. I saw him up in Sacramento. I saw him down here when he came down to be put in the concentration camp. I don't remember exactly the date. I haven't seen him or visited him up there. I have never seen you before this case. I have never talked to you.

I know a person by the name of Jack Cherry. I have been engaged as a prostitute since August of 1941. I don't remember turning any earnings over to Mr. Cherry.

I can't recall a man named Pete Parks. I don't know whether I met a man named Pete Parks in Honolulu. The name doesn't sound very familiar. I met an awful lot of people in Honolulu. I can't remember visiting Pete Parks under the name of "Pete Parks" in San Francisco. I didn't have photographs taken with Pete Parks in Honolulu as I know of. I took a lot of pictures. I don't remember any certain pictures. [162] —Or a certain person.



(Testimony of Helen Merle Beverlin.)

I have been engaged in my profession as a prostitute since August of 1941, now and then. I have not been turning my earnings over to anyone.

I might have gone to a bank and cashed a check of Mr. Di Marzo. I remember going to a bank and getting some money for Mr. Di Marzo on a couple of occasions. I guess I cashed checks to get it because I am not very well acquainted with banks. I did not have to identify myself when I went to the bank. I think Mr. Di Marzo either sent his little book along with me or some kind of his identification. As to whether those were small checks like ten or eleven dollars—I couldn't say what the denomination was. I don't remember ever receiving \$100 for my own personal use all at one time from Mr. Di Marzo. I did not buy clothes that cost \$100. I never bought anything that cost \$100 as far as a dress was concerned. I didn't buy any fur coats. Mr. Di Marzo bought them for me. Mr. Di Marzo bought me a fur coat once. He bought me a watch. He bought me a few dresses and a few suits. I am friendly toward Mr. Di Marzo.

I think I sent letters from Hawaii addressed to myself in Los Angeles. I think that that was the arrangement, as best I can remember. It was over to the Detroit Apartment, the one Joan Day moved in after I moved out. I was not jealous<sup>i</sup> about Joan Day moving in. She is a very nice girl.

(Testimony of Helen Merle Beverlin.)

Redirect Examination

I have never known Mr. Jim Crawford until about a week or so ago. I have never known you until the early part of August of 1942. And only in an official capacity.

Recross Examination

I couldn't say who Mr. Lazarus was. I don't remember him. I talked to a lot of people. I don't know whether they were government prosecutors or what they were. I don't think I have been on the 6th floor of this building, the office of the United States District Attorney, prior to seeing Mr. Neukom. I have been in the Grand Jury room. I can't recall whether I talked to some deputies on that floor when I was there. I might have. That has been some time ago. I can't remember the exact date. Perhaps around April.

I have not talked this case over with Joan Day since I have been down here. I don't recall talking to her in the witness room. I might have said, "hello" to her. I don't recall conversing about this case or anything. Nobody talked over her testimony with me. Mr. Tyler did not talk over her testimony with me, or show me her testimony. I wasn't shown or it wasn't discussed with me. I don't remember what day or date I was on the 6th floor of this building at the office of the District Attorney.

The Court: The witness may be excused?

(Testimony of Helen Merle Beverlin.)

Mr. Neukom: The witness may be excused, your Honor, until the conclusion of the case. [164]

The Court: And will be subject to call. You will remain, subject to call, until formal order is made releasing the bond excusing you.

Mr. Neukom: I should like to offer at this time Govern- [164-a] ment's Exhibit No. 2 for identification. I offer it in evidence at this time.

(The document referred to was marked "Government's Exhibit No. 2" for identification, and received in evidence.)

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## GEORGE REED

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

### Direct Examination

By Mr. Crawford:

I am an investigator, Nick Harris Detective Agency. I know Joe Di Marzo. I have known him quite some time. I have known him and I know him to say hello. I don't know him very well.

I know Judy Bradford. I have known her just for a short while. I have had occasion to visit the defendant at his address at 712 South Garland Avenue. The first time I met Judy Bradford was when she arrived. I don't know for sure where from. I had occasion, after her arrival, some

(Testimony of George Reed.)

months thereafter, to visit Mrs. Bradford in the hospital.

I was present at 712 South Garland Avenue at which time a conversation was had and Judy Bradford and Viola were discussed by the defendant. I have no idea of the approximate time. It was quite some time ago. There was a number of people there. I don't remember who. [165]

Q. Now, will you state the conversation, just what Di Marzo said or what you said?

A. Well, that is pretty hard to do.

Mr. Lavine: Just a minute. I object to that as irrelevant, incompetent, immaterial, not within the issues of this case.

The Court: Objection overruled.

Mr. Lavine: Exception.

The Witness: I don't remember what the conversation was or who it was said to.

By the Witness:

The conversation was that Mr. Di Marzo had sent the two girls to Honolulu.

Q. Did the defendant make a statement?

A. In substance that was the conversation.

Mr. Lavine: Just a minute. I object to that as a conclusion of the witness. I move that the answer be stricken.

The Court: Motion denied.

Mr. Lavine: Exception.

Q. By Mr. Crawford: Did he give the names of the parties, or were the names of the parties in the discussion?      A. Yes, sir.

(Testimony of George Reed.)

Q. Who were the parties named?

A. Judy and Viola.

Mr. Lavine: May I make a motion to strike those last two answers on the same ground as heretofore? [166]

The Court: Yes.

Mr. Lavine: As irrelevant, incompetent, immaterial.

The Court: Motion denied and exception granted.

#### Cross Examination

By Mr. Lavine:

My name is George Reed. It is not a fact my name is Kliman. My adopted name is Reed. I was adopted when I was a child. My true name is Kliman, but my adopted name is Reed. I am known under both names. I am not necessarily generally known under the name of Kliman.

I couldn't say what night it was that I heard this conversation. I have no idea what month it was. It was in the past year or so. This conversation was in Mr. Di Marzo's residence. I don't remember who else was present—a number of people. I had not been drinking. I may have had a drink. I don't think I had had two or three drinks. Everybody in the party was drinking. Mr. Di Marzo was in the living room when I heard this conversation. I do not remember what month it was. As a matter of fact, I didn't pay much attention to the conversation. I was not having a social evening that evening. I had stopped by.



(Testimony of George Reed.)

I can't say for sure how long I remained. Not long.

I am working for Nick Harris now. I was not taken into custody in the investigation of the District Attorney's office. The District Attorney's office did not take me in and take a statement from me in connection with their [167] investigation of vice and corruption. I talked to Grant Cooper of the District Attorney's office. I don't know if Mr. Di Marzo had told him about me or not. I have met Mr. Grant Cooper. I know him as the Chief Deputy District Attorney of Los Angeles County. I had a conversation with him. I never made a statement. He did not ask me about my activities and the activities of various police officers whom I knew. I don't think he asked me if I knew certain police officers named Bill Jolin and Dave Conlee. He knew that I knew them. He did not discuss my having brought about the arrest of various persons in connection with members of the Los Angeles Police Department. I think he asked me about any information that I might know in connection with the Sasso-McGonigle case. I didn't know the people.

As to whether the night that I heard this conversation in the apartment of Mr. Di Marzo Judy Beverlin came in intoxicated—if I remember right, she wasn't there. She may have been. The only time I saw her was the night she came in. If that is when she came from Honolulu, it's the first time I met her. She was not intoxicated then. Mr.

(Testimony of George Reed.)

Di Marzo told me that Judy was having a love affair with a Kanaka on the Island.

### Redirect Examination

By Mr. Neukom:

Mr. Di Marzo showed me some pictures that he said he [168] had found in her belongings of a Philipino or something; that he felt very bad about it and thought that there was something going on between them. From his conversation I would believe that he hadn't heard from her for a long time.

(At this point the Government rested its case.)

Mr. Lavine: May it please the Court, before I make my motion for a directed verdict, I have asked for the privilege of recalling Judy Beverlin for a little further cross-examination, and she is not present. I would like to reserve that right. I do not think it would in any way make any change in your Honor's ruling on my motion for a directed verdict, and I am prepared to go ahead and argue the motion at this time.

The Court: I think all the evidence should be in on a motion for a directed verdict, because I can't grant or deny a directed verdict on what might or might not be proven.

Mr. Neukom: I cannot anticipate what is in Mr. Lavine's mind, and, consequently, when she was excused, I told her she would not have to show up again until 1:00 o'clock tomorrow. I have

telephoned her bondsman to try to get hold of her, but where she is I do not know. The woman told me she wasn't feeling very well. She has got a bad cold.

The Court: She wouldn't have time to get back to Huntington Beach. [169]

Mr. Neukom: She might be on the way to Honolulu; I don't know.

The Court: Your motion is not in order. You have either to make up your mind, Mr. Lavine, whether you want Judy Beverlin back, or a motion for non-suit.

Mr. Lavine: I want her back, your Honor.

Mr. Neukom: I know of no way of assuring you I can reach her this afternoon.

The Court: I think you will probably have to call her as your witness, if you want her back. In any event, your motion for non-suit is denied.

Mr. Lavine: In view of her attitude, would your Honor permit me the indulgence of treating her by cross-examination in my questions?

The Court: It will have to be determined by the questions you ask, the nature and character of them, at the time. I will say this, Mr. Lavine: any ruling I might make with respect to that will not be governed entirely by the witness' statement that she was friendly to your client.

Mr. Lavine: At this time defendant moves for a directed [169-a] verdict on the ground that the Government has failed to establish its case under the indictment as alleged.

Now, it would hardly be necessary, it seems to

me, in view of the careful attention which your Honor has given in this case, to reiterate the evidence by which we contend that a directed verdict should be had at this time. Nevertheless, it appears to me, your Honor, that under the indictment as alleged, it is incumbent upon the Government to establish by sufficient evidence to overcome the presumption of innocence with which the defendant is at this time clothed, and was clothed throughout the entire trial of the case, that he either transported or caused Judy Bradford to be transported to Hawaii. That is the charge at this time in the indictment.

It further charged that he did do so for purposes of prostitution, and other immoral purposes, and debauchery. We have here no evidence whatsoever of transportation, so far as the defendant is concerned. I think that we may concede, so far as the question of transportation is concerned, he didn't convey her.

All the cases hold, insofar as transportation is concerned, that involves some carrier, some means of transportation: automobile, airplane, ship, or some other means of transportation.

The defendant did none of these things in this case. We are left solely with the proposition as to whether he [170] caused her transportation and, upon that premise, we are confronted with the testimony of Judy Bradford herself that she went of her own accord; that the defendant did not want her to do, and that in spite of that fact she did go.

Now, that, in substance, is her testimony, and

that is the Government's case, with the exception of certain other alleged acts or certain other alleged transactions with which the defendant was connected so far as the Government's testimony is concerned, but which in no way establishes either transportation, or that he caused the transportation of this witness Beverlin to Hawaii.

Where is there any evidence as to his having caused her to be transported? The word "caused" has a well known meaning under this particular Act. I have given your Honor an instruction on the definition of the word "cause" which was taken from a Mann Act case. It relates to some act or agency, something that is done, something that is more than merely as in an advisory capacity; something more than lending money.

Assuming everything that the Government has established as being without conflict; assuming, even though the Government witnesses who have conflicted themselves have established the thing they are seeking to establish, what evidence have we either establishing transportation or causing transportation in this case? We have the testimony that Judy Bradford had received \$200 prior to her having taken a trip, but there [171] is no persuasion or enticement or inducement or any other causation. This defendant was not an agent for her having gone over there. He didn't arrange any such trip. She went of her own accord. There was nothing to show that he, in any way, caused her to be transported within the meaning of the Act itself.



Your Honor is familiar with the testimony of all the witnesses and I will not summarize or presume to summarize all of them at this time. But, I feel under the evidence as has here been submitted, that it is insufficient to show that the defendant either transported or caused transportation in interstate commerce for the purposes of prostitution. I believe the other purposes are not advanced by the Government. The only purpose is prostitution.

It is true that they have established that she did engage in prostitution when she went to the Islands, but they didn't establish that was the purpose of her trip, or was that brought home, so far as the defendant is concerned, to him in this case.

And so, for those reasons, your Honor, I move for a directed verdict at this time.

The Court: Your motion is denied.

Mr. Lavine: Exception.

At this time, your Honor, there is certain testimony in which there were a number of reservations made during the course of the introduction of testimony. [172]

The Court: Yes.

Mr. Lavine: That concerned a motion to strike.

The Court: I do not think, under the law, you lose your right to make that motion if you request now to reserve it to the conclusion of the case.

Mr. Lavine: Very well.

The Court: It may be well, at that time, if you desire—I am merely suggesting it because you

may want to renew some other motions then, and the Government may, as well.

Mr. Lavine: I have to renew my motion for a directed verdict at the time? That is reserved?

The Court: That is correct, to reserve that; but I will consider that you have made a request to postpone your motion to strike until the conclusion of the whole case.

Mr. Lavine: Very well.

The Court: So that you may make it cover everything that is in.

Mr. Lavine: Thank you.

The Court: Does the Government have any motions to strike?

Mr. Neukom: None, your Honor.

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## DEFENDANT'S CASE

### LAURA MORGAN

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows: [173]

#### Direct Examination

By Mr. Lavine:

My occupation during 1941 and 1942 was apartment house manager at 618 South Detroit Street. I know Joe Di Marzo. I know a girl by the name of Judy Beverlin. I rented the apartment to Miss Beverlin November 4, 1940. Mr. Di Marzo was

(Testimony of Laura Morgan.)

with her at the time I rented her the apartment. They said they wanted an apartment, that they were going to be married in a week or two. They just looked like all the prospective brides and grooms, hand in hand, and looked very much in love.

Subsequent to that time, I saw Miss Beverlin from time to time. Mr. Di Marzo wasn't living there, just Miss Beverlin. I had occasion at one time to miss her being away from the apartment house. That was about a month or six weeks after she moved in. I saw her shortly after that. I saw when she came home.

Q. What did she say to you then, and what did you say to her?

Mr. Neukom: I object to that. Was that in the presence of the defendant?

Q. By Mr. Lavine: Was the defendant present at that time? A. No.

Mr. Neukom: I object to this. There has never been any proper foundation for the purpose of impeachment. [174]

Mr. Lavine: It is not offered for that purpose, your Honor.

Mr. Neukom: The statement of any witness to this case unless it is in the nature of impeachment, which was made out of the presence of the defendant, I do not believe is material to the case.

Mr. Lavine: It is for the purpose of showing why she was away, and as to her free agency, which we have gone into here on the record.

(Testimony of Laura Morgan.)

The Court: Well, but that's impeachment. The objection will be sustained.

Mr. Lavine: Exception to that ruling.

By the Witness:

Miss Beverlin was gone about two weeks. After she came back I learned where she had been. Miss Beverlin told me, when she moved in, in the presence of Mr. Di Marzo, that she was working at an automobile agency. I think she said it was the DeSoto Agency on Western. On this occasion, after she returned, after having been gone two weeks, she said something to me about going away again on a trip. That is, somewhere on or about January 24. I saw her on January 24, 1941. It was noon, or shortly thereafter. She was alone. I saw her leave. I didn't hear her call for a taxi cab. She had a 'phone in her own apartment. I saw this taxi cab call for her. I did see her leave on January 24, 1941. Mr. Di Marzo was not there at the time. She told me, when [175] she left, she was just going up north. I locked her clothes up in her apartment. I saw the clothes she had in the apartment. It was a very complete wardrobe; fur coats, jackets, and suits and hats, and shoes and all the things a woman has to wear. I locked them up. I locked the closet.

As to whether I ever saw any letters come to that apartment house addressed to Judy Beverlin—I saw one letter from the telephone company. As to whether Judy Beverlin ever received any other mail from January 24 until the apartment was

(Testimony of Laura Morgan.)

vacated—not to my knowledge. She did not get any, to my knowledge. I mean, I don't know whether she got any mail. I pretty well know. I meet our mailman practically every morning because a person has to be in the house about six months before he remembers their names, and I often help him in finding the parties he wants to give mail to. As to whether or not any mail came there addressed to Judy Beverlin—I don't know. I know this telephone company letter came, because they came over to me to see why the bill hadn't been paid, and they asked me if I knew the bill had come there; and it was in the box, we could see through the slits in the box, and they later got that. Aside from that one letter, I did not ever see any other letter addressed to Judy Beverlin covering the period January 24, 1941, until the apartment was vacated. I never saw any mail there from the time she came in. I never saw any mail addressed to Judy Beverlin, except that one letter [176] from the telephone company. The mail man did not ever inquire from me.

The name of this apartment is Ritz Wilshire. There are twelve apartments. They are doubles. There are two floors. Six above and six below. There is a front entrance and a rear entrance, and that serves all twelve. I never saw any other men visit Miss Beverlin in this apartment.

As to whether I know of a fight or a quarrel that took place shortly before January 24, 1941,



(Testimony of Laura Morgan.)

between Joe and Miss Beverlin—I wasn't a witness to it. I don't know what caused it, but Mr. Di Marzo called me on the 'phone from somewhere in the city. After I got a 'phone call from Mr. Di Marzo I saw Judy Beverlin. I told her that Mr. Di Marzo had called and was worried about her and wanted her to be sure and call him. I don't remember what she said.

### Cross Examination

By Mr. Neukom:

My testimony about having not seen a letter received in Judy Beverlin's box also extended from the period from January until April of 1941. I was there as apartment manager during that period of time.

Q. Didn't you see another young lady occupy the apartment occupied by Judy Beverlin?

A. Yes.

Mr. Lavine: I object to this as not proper cross examination. [177]

The Court: The objection is overruled.

Mr. Lavine: Exception.

Q. (By Mr. Neukom): Who introduced you to her?

A. Mr. Di Marzo.

Mr. Lavine: Just a minute, now. That is objected to as not proper cross examination. There has been nothing brought out about any other person in there on direct.

Mr. Neukom: Counsel can't so severely limit

(Testimony of Laura Morgan.)

me, your Honor, when he extends over a period, when I have a purpose in inquiring.

The Court: I think so. I think counsel feels this examination covered the period she was manager, and also Judy Beverlin's leaving, and locking up her clothes, which opens that incident. I think it opens the door. The objection is overruled.

By the Witness:

I know her as Miss Taylor. I didn't know her as Joan Day until a day or two ago when I saw her picture. I know her as Renee Taylor. Joe Di Marzo introduced her to me. She did not look very much in love with the defendant to me. I can always spot a prospective bride and groom, when they come in the building, if that's what you mean, by my ability to decide whether they are in love or not. I am endeavoring to run a very reputable apartment. I would not have let Judy Beverlin in there if I had known she was a prostitute. Judy Beverlin told me she was working for some DeSoto Agency [178] when she came in. I don't know the exact date she left. I presume that was about January 24, 1941. It is rather cool, sometimes, around that time. She said she was going up north. She had left her fur coat in the closet.

These mail boxes that are there; they are just little individual boxes alongside of the wall, which the mail man comes to and drops letters in. I don't spend my time running around to see whether there are letters in a box. But I meet him out there so I can get my mail. He comes twice a day.

(Testimony of Laura Morgan.)

I do not go away and visit people very often. I don't stay around and watch every letter that comes in. Miss Taylor also had a key to the mail box, but her name wasn't on the mail box.

After Judy Beverlin left, Joe Di Marzo did not pay the rent for Miss Taylor. Miss Taylor paid it to me. Joe Di Marzo did not say anything to me about his going to get married to Miss Taylor, since Judy Beverlin had gone up north.

As to how I came to lock up her clothes—in the first place, at that time there was quite a lot of pilfering in the apartment house, and when I saw those beautiful clothes in there I thought it would be more adequate protection. Joe Di Marzo asked me to lock that closet. That lock was one that a skeleton key would go into, that is, the closet door—not a Yale. I have the key on my ring. I still [179] have it. Her clothes are not still locked up. I kept that key myself until she called for her clothes. She did call for her clothing. It must have been in May some time.

#### Redirect Examination

By Mr. Lavine:

As to whether she had three fur coats—I know she had three with fur collars. She had a fur jacket and one or two fur coats, and cloth coats with fur collars, as I remember it. I didn't see her have any coats when she left; and one bag. That is all I saw her take. I do not know what was in the bag.

## PHILIP THOMAS TOWER,

a witness called by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Lavine:

I am an investigator in the office of the district attorney in Los Angeles County. I have been an investigator in that office almost two years. I was an investigator in the office of the district attorney of Los Angeles County during an investigation being conducted by that office concerning vice and corruption in 1941, but not in 1940. I know Marion Anderson. I know Joe Di Marzo. In 1941 I was present at a conversation between Marion Anderson and Di Marzo, and I talked with her in the presence of Joseph Di Marzo. [180] There were people that came and went. I don't remember anyone present during the entire conversation. It was early in this year. It was during the Sasso-McGonigle trial in the Superior Court. I believe it was in February. The conversation took place in the office of the Deputy District Attorney, Miller Levy, on the sixth floor of the Hall of Justice.

Miss Anderson and I were in this office when Mr. Di Marzo came in. He says, "Hello Marion. I haven't seen you for a long time." He said, "I want to talk to you."

She said, "All right, Joe."

He said, "I understand you have been going around town telling a lot of lies about me and Judy

(Testimony of Philip Thomas Tower.)

Beverlin." He said, "I want to get the straight of it."

She said, "Why, Joe, I haven't talked about you and Judy Beverlin."

He said, "Oh, yes you have, because it has come to me from several sources." He said that I took some money from her when she came back from Honolulu." He says, "Marion, you know that is a dirty lie."

She said, "Joe, I never said anything like that. How would I know you did that?"

The conversation went on, and he told her something else he had been accused of, something about some jewelry. She denied that. She said, "I have always liked you. I don't know why you would think I would say anything about [181] you."

And she said, "I wish you would do something about Judy. I wish you would help me with Judy. She is going to the dogs, Joe, she is on the dope——"

Mr. Neukom: I object to this latter part. It is entirely self-serving and it has not been brought out by any witness and isn't proper subject matter to impeach.

The Court: You are correct. It may be stricken.

Mr. Lavine: The Government produced testimony regarding—there was testimony produced——

The Court: I am speaking now of the latter part, where the witness says the defendant said: "I wish you would help me with Judy Beverlin——



(Testimony of Philip Thomas Tower.)

The Witness: It was not the defendant; it was Marion Anderson.

Mr. Lavine: This was part of a conversation between this man and Marion Anderson in the presence of the defendant.

The Court: I understood Di Marzo said to Marion Anderson: "I wish you would help me——"

The Witness: No. Marion Anderson said she wished Joe would help her about Judy Beverlin.

Mr. Neukom: Marion Anderson wanted Joe to help Judy Beverlin?

The Court: Because Judy Beverlin what?

The Witness: Was on the dope. She said she was smoking marihuana. [182]

Mr. Neukom: Just a moment. I object to this testimony. It is obvious there is only one purpose in this type of testimony. It isn't the subject matter of impeachment. It is self-serving and hearsay, and I believe my objections are well made.

The Court: On all scores. The objection is sustained. The motion to strike is granted. The jury will be instructed to disregard it.

Mr. Lavine: Exception.

By the Witness:

I remember this in the conversation, of Joe Di Marzo making this particular statement to Marion. Marion had said to Joe, "Joe, you have always been a sucker when it came to Judy Beverlin. Certain people in the racket never could understand you. You have spent so much money on that girl——"

(Testimony of Philip Thomas Tower.)

Mr. Neukom: I object to all of this. It is very obvious it isn't proper subject matter of impeachment. It is very obvious what the purpose of the witness in testifying to this effect is. It has nothing to do so far as impeachment is concerned, and it would only be hearsay so far as this particular case is concerned.

Mr. Lavine: It is impeachment of Marion Anderson.

The Court: Well, I don't know that—on what basis? Bias or prejudice? Contrary statements? There wasn't anything here that Marion Anderson—

(Mr. Lavine refers to transcript.) [183]

The Court: While you are finding it, I will sustain the United States Attorney's objection. I will strike the answer and instruct the jury to disregard it and admonish the witness.

By the Witness:

I don't recall her saying anything about her going to Hawaii.

As to whether I remember at that time that Mr. Di Marzo in the District Attorney's office, that is, in Miller Levy's office, with just we three present, said that she heard that Miss Anderson had made some statements that he had taken \$500 from Judy Bradford after she returned from Honolulu and Miss Anderson said, "I never made any such statements"?—I don't recall the amount of money. I don't recall the \$500, but I recall her making that

(Testimony of Philip Thomas Tower.)

statement; that she hadn't said a thing about Joe having anything to do with Judy going to Honolulu. Mr. Di Marzo asked her if he said Judy Beverlin was going to Honolulu, and Miss Anderson denied any such thing and said, "I wouldn't know anything about it, anyway."

I subsequently had occasion to talk to Miss Anderson again. I believe I had talked to her in the County Jail.

There was something said in this conversation that I had with Miss Anderson and Mr. Di Marzo in the District Attorney's office about Mr. Di Marzo's having been in love with Judy Bradford. Mr. Di Marzo at that time and place said to Miss Anderson, "You know that I didn't know that Judy Bradford [184] had gone to Honolulu. That isn't exactly the same way he said it.

I subsequently saw Marion Anderson in the County Jail.

She did not subsequently make any complaint to me against Joseph Di Marzo.

#### Cross Examination

By Mr. Neukom:

Joe Di Marzo was cooperating with the District Attorney's office as early as October 2, 1941.

(Mr. Neukom hands document to counsel.)

Q. (By Mr. Neukom): You were present at the interview conducted by the Deputy District Attorney, Joseph P. Powers, in room 656, Hall of Justice, at 12:00 noon, October 2, 1941, where Joe

(Testimony of Philip Thomas Tower.)

Di Marzo was asked certain questions in your presence and in the presence of other people.

Mr. Lavine: To which I object, your Honor, as not proper cross examination. Nothing touched on in the direct examination to which he is referring now.

The Court: Objection overruled.

Mr. Lavine: Exception.

By the Witness:

I believe I remember that interview. At that time Mr. Joe Di Marzo was interrogated with regard to his knowledge concerning certain matters that were being investigated by the District Attorney. It is not true that at this time I talked to Marion Anderson in the presence of Joe Di Marzo [185] that I knew Marion Anderson had been convicted of a vice charge and was applying for probation. I believe you are mistaken on that point. I don't think at that time she had been convicted. If she had it wasn't to my knowledge that she was applying for any probation. I knew that Marion Anderson was the subject for a vice charge. We had her in custody. During that time Marion Anderson was in custody. Part of the time she was out on bail. Marion Anderson's charge was for operating here in this County on vice charges involving prostitutes and things of that nature. I was not concerned with any investigation of the Mann Act or interstate commerce.

As to how it happened that I permitted Joe Di

(Testimony of Philip Thomas Tower.)

Marzo to interrogate Miss Anderson at that time with regard to whether of not Judy had gone to the Islands and been sent thereby Joe Di Marzo—Well, both of them were on bail. They were waiting to be called as witnesses on the trial that was going on upstairs in the Superior Court. They had the perfect right. I wasn't assigned to watch them. They could have talked in front of me or they could have talked out in the hall and talked on any subject they desired. I couldn't restrain them. I was in Mr. Levy's office. Mr. Levy's office was upstairs. He was keeping the witnesses in his office as a sort of witness room. Mr. Di Marzo didn't testify. Marion Anderson did. Marion Anderson's testimony was stricken.

I have not been in that line of work many years. I have [186] only been in this line of work two years.

As to whether I can repeat now just what was said by Marion Anderson with regard to her knowledge concerning Judy Bradford's going to Honolulu—As I recall, there was nothing said about her going.

At first Joe Di Marzo was a little bit peeved. Later on it became a regular love feast. They told each other how much they thought of each other. He claimed he had love in his eyes but not for Marion Anderson.



(Testimony of Philip Thomas Tower.)

Redirect Examination

By Mr. Lavine

I had occasion to talk to Mr. Tyler about this case, on several occasions.

Q. (By Mr. Lavine): Tower, did you give the F.B.I. and Mr. Tyler the names of several other persons who were sending persons to Hawaii?

Mr. Neukom: Now, your Honor, that is obviously the vice. Because we haven't tried every person that might be guilty of an offense, why, we are derelict. I object to it, your Honor.

Mr. Lavine: Now, if your Honor please, the purpose of that offer is this: We have a right to show, under the Hysler case, that where there is a specialized prosecution or a certain person is singled out and others are not prosecuted in relation to a set of circumstances where the officers are singling out one individual—— [187]

Mr. Neukom: I object to this kind of argument along the lines he is now trying to develop because obviously, I think, it is a mistake. It may be that there are pending many cases of a like nature that I don't know about. We have some twenty odd deputies in our office, and I don't think it is at all proper to bring in anything here about any other case unless it is for the purpose of impeachment.

The Court: The objection is sustained, and the jury are instructed to disregard the remarks of Mr. Lavine and Mr. Neukom.

(Testimony of Philip Thomas Tower.)

Mr. Lavine: Now, may I make an offer of proof, your Honor, in order to complete my record? At this time I offer to prove that this witness would testify that he gave the F.B.I. and the Department of Justice the names of four or five other persons who, the investigation in the District Attorney's office had developed, were sending persons or getting persons to go to the Hawaiian Islands and that none of them have been the subject of prosecution.

Mr. Neukom: I object to the latter part of that because this witness obviously didn't know whether they have been the subject of prosecution or the subject of further investigation.

The Court: The offer of proof will be rejected. The matters, even if offered and proved, would be wholly immaterial.

Mr. Lavine: Well, exception noted. [188]

The Court: You may have your exception.

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### GRANT B. COOPER

called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Lavine:

My occupation with Los Angeles County is Chief Deputy, District Attorney. As such, during the

(Testimony of Grant B. Cooper.)

year 1941, I was conducting an investigation of vice and corruption in Los Angeles County, trying to get the higher ups. During the course of my investigation I talked to Joseph Di Marzo, defendant in this case. He assisted me in the investigation I was making. As a result of the information that he gave me and as result of that investigation the Court granted Mr. Di Marzo immunity. (It is understood that the reference is to the State Court.) It was based upon the recommendation of our office to the Court. I did not grant Mr. Di Marzo immunity. Mr. Di Marzo was told by me and also told in the presence of his attorney that if he assisted us in these investigations we would recommend, that is, the District Attorney's office would recommend, to the Court that the charges then pending against him—I believe the charges against him then pending were pandering, pimping and statutory rape—would be dismissed. And a motion was made before the Court and those charges were dismissed by the [189] Court. Generally speaking those charges grew out of the same transactions upon which later, convictions of other people were had. Marion Anderson, to the best of my recollection, pleaded guilty or was convicted. That is a conviction that was the result of that investigation. The investigation also aided me in the prosecution of others along the same line. I was seeking, through the help of Mr. Di Marzo, to reach some one in charge of vice at that time in the Sheriff's office.

(Testimony of Grant B. Cooper.)

Q. Was that person later transferred to the subversive squad or alien enemy squad of the Sheriff's office?

Mr. Neukom: "That person" is awfully indefinite. Furthermore, it hasn't any materiality to this case how the Sheriff runs his office or how Mr. Cooper runs his office.

The Court: Objection sustained. The jury is instructed to disregard the implications in the question.

Mr. Lavine: Exception noted.

By the Witness:

We located Judy Beverlin. I am the one who sought to locate Judy Beverlin. It is within my actual knowledge. I have the correspondence here with me.

Q. By Mr. Lavine: You communicated with Chief Horrall to locate Judy Beverlin, did you?

A. I communicated with Chief of Police Horrall on October 16, 1941, requesting him to make a request of the Chief of Police of Honolulu because I knew that they were acquainted. [190] And then in response that I received——

Mr. Neukom: I move that all this be stricken, your Honor, because obviously the best testimony as to any communication to the Chief of Police of Honolulu, if it is material, is the testimony of the Chief of Police Horrall.

The Court: I fail to see the materiality of the question.

(Testimony of Grant B. Cooper.)

Mr. Lavine: Well, it is material in this: That Judy Beverlin was later taken into custody for questioning through this procedure, and she was questioned——

The Court: What is the materiality of that?

Mr. Lavine: After she returned from Honolulu.

The Court: What is the materiality of that?

Mr. Lavine: It is to show that Joe Di Marzo knew nothing of her being in Honolulu, your Honor. The way they located her was such that Mr. Di Marzo didn't know she was there.

Mr. Neukom: Your Honor, that is confusing the case in the minds of the jury. I renew my objection. This is the third trip. There was no contention by the government that Joe Di Marzo had anything to do with the third trip. You will remember the quarrel intervening between——

The Court: All right. Objection sustained.

Mr. Lavine: Exception.

The Court: The testimony so far given in response to the last question and the answer of the witness is stricken and the jury instructed to disregard the entire question by [191] Mr. Lavine.

By the Witness:

I saw Judy Beverlin after she returned to the United States. I had her questioned before she returned to the United States.

Q. Did you request any one in the Hawaiian Islands or elsewhere to question her before she returned to the United States?



(Testimony of Grant B. Cooper.)

Mr. Neukom: Obviously, if there was any interrogation of Judy Bradford in the Hawaiian Islands, unless Mr. Cooper was present, the person who was present at that time is the only one who can testify. This is hearsay.

The Court: I fail to see the materiality of that, counsel. Is this an impeaching question?

Mr. Lavine: No, your Honor.

The Court: Are you laying a foundation for impeachment?

Mr. Lavine: No. This is the defendant's case, and this is the purpose of it: we have various trips that this girl took and we have a right to show that she was a free agent; that she went over there of her own accord.

The Court: That she made some statements or admissions?

Mr. Lavine: Well, she made some statements there.

The Court: Is that the purpose of this? You are laying a foundation for that?

Mr. Lavine: No, I am not laying a foundation for the statement. I am laying a foundation of the fact that she [192] was there of her own accord, that she came back, that she was there on the third trip and that the defendant didn't know that she was there. Now, that is the purpose of this particular line of questioning.

Mr. Neukom: On the third trip, you mean?

The Court: On the third trip?

Mr. Lavine: That is correct.

(Testimony of Grant B. Cooper.)

The Court: Well, Government's counsel has stipulated that.

Mr. Lavine: I haven't heard any stipulation.

The Court: Well, he just made a statement a moment ago that he agreed that she went over there of her own free will on the third trip.

Mr. Lavine: I will accept that stipulation, then.

The Court: And the testimony here this morning about the intervening, well, dispute between the second trip and the third trip and the witness' own statement that she went there. So counsel for the Government is now bound under his statement.

Mr. Lavine: Well, with that stipulation I deem that the purpose of this particular questioning is covered.

By the Witness:

I sent officers from my office to pick Miss Beverlin up and bring her to my office. I was informed by the officers that Mr. Di Marzo aided in pointing her out after she had returned. Miss Beverlin later came into my office, and I talked to her. [193]

As to whether I asked her then about her relations with Mr. Di Marzo—I don't recall whether any specific questions of that kind were asked of her by me or not. I don't believe she was ever at my house. She may have been. I do recall talking to her. I requested her to make a statement about her knowledge of any vice conditions that I was then investigating. I can't give you the exact time, but to the best of my knowledge and

(Testimony of Grant B. Cooper.)

belief it would be November 7, 1941. I know I did question any number of witnesses at my home and other places. But to the best of my recollection now we talked to her at the office. I may be wrong on that though; but that is the best of my recollection.

### Cross Examination

By Mr. Neukom:

My office was only interested in connection with local or county vice. It wasn't within the jurisdiction of my office to prosecute anyone for violation of the Mann Act. Our office always cooperated with the F.B.I.'s office in trying to reveal facts which were violations of the Federal Laws. Mr. Di Marzo in the first instance was arrested by the Sheriff's office, not by our office. Our investigations had crossed those of the Sheriff's office. I believe from the knowledge I then had within my possession that Mr. Di Marzo had knowledge which would be of assistance to us in the objective of our investigation. In the course of my interviews with Mr. Di Marzo I confirmed the fact that he had considerable knowledge [194] concerning the vice and prostitution in this locality. To the best of my recollection he was charged with pandering, pimping and statutory rape. The complaint in the first instance was issued by our complaint department on application of the Sheriff's office, and it didn't come before me. I found in the course of my conversation with Mr. Di Marzo that he was abundantly acquainted with such sub-

(Testimony of Grant B. Cooper.)

jects and matters as that, with regard to this County. He was of great help to us because of that knowledge. I found that in order to be able to utilize his testimony in conjunction with convicting other persons that we must give him some sort of assurance that he would not be prosecuted, would not have to incriminate himself if he testified in these cases. It is my judgment, that is a usual thing which is done in all law enforcement agencies. That was entirely in the State Court, operating under the State Laws and not in any way under the Federal Laws. Mr. Di Marzo was known to me by two names that I recall: Joe Di Marzo and Joe Dundee.

#### Redirect Examination

By Mr. Lavine:

I cooperated with the Government during 1941.

Q. There wasn't anything in your case that wasn't open for investigation or prosecution during that year, was there?

Mr. Neukom: I object to that, your Honor. Obviously the Statute of Limitations does not run against the crime here. [195]

The Court: Objection sustained.

Mr. Lavine: Exception.

Q. (By Mr. Lavine): Well, in so far as this particular charge on trial here, there wasn't anything done by your office that prevented the Government from prosecuting the case in 1941, was there?

(Testimony of Grant B. Cooper.)

Mr. Neukom: I object. That is a conclusion.

The Court: Sustained.

Mr. Lavine: Exception.

Q. (By Mr. Lavine): Well, Mr. Cooper, without naming him, unless the Court so desires, did your investigation, and with the cooperation of Mr. Di Marzo, lead to someone who is now engaged in the handling of aliens for the sheriff's office?

Mr. Neukom: Just a moment. That is as vague as Alice in Wonderland. I don't know what in the world it has to do with this case. I object to it as being immaterial.

The Court: Sustained.

Q. (By Mr. Lavine): May I have an exception to the last ruling, your Honor?

The Court: You may.

By the Witness:

My investigation also led to police and deputy sheriffs who were under investigation. Mr. Di Marzo was very helpful in giving me information along that line. [196]



ANTHONY GEORGE JOSEPH JOYCE,

called as a witness by and on behalf of the defendant, after being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Lavine:

I am investigator attached to the District Attorney's office, Los Angeles County, California. During the years of 1940 and 1941 I was assigned to the investigation of public corruption and bribery. During the course of that investigation I met Joe Di Marzo, the defendant. I talked to him, and questioned him.

Q. Did he cooperate with you in the investigation?

Mr. Neukom: I object to this, your Honor, as being immaterial. Mr. Cooper is the head of the department. He said he cooperated. Any of this line of testimony is immaterial to this case. I object to it upon that ground.

The Court: Sustained.

Mr. Lavine: *Exemption.*

By the Witness:

I had occasion to question Judy Bradford, also known as Helen Merle Beverlin. I picked her up for questioning by my office. I believe it was either in the latter part of October or the early part of November of 1941. I, with the assistance of Mr. Ray Huber of the Los Angeles County Sheriff's Office, and by prearrangement with Mr. Di Marzo who walked [197] in a door with her to identify her

(Testimony of Anthony George Joseph Joyce.)

before us at the Rosslyn Hotel, in Los Angeles, we got acquainted with her and picked her up and brought her to our office. She was rather hysterical, and she said she had a hard trip on the boat. We obtained her promise to appear at an appointed time later in the week, I think, or the following week, and she kept the appointment. I got Mr. Di Marzo to help me point her out. I took Miss Beverlin in and later on I got a statement from her.

#### Cross Examination

By Mr. Neukom:

Mr. Di Marzo was cooperating with me along that line on my investigation of corruption and bribery. While he was cooperating with me along that line he singled out Judy Beverlin to me when she came into the hotel.

#### Redirect Examination

By Mr. Lavine:

The day he pointed her out—and I am going entirely my memory—it was the latter part of October, or the beginning of November, 1941. I believe the case that we wanted that girl Bradford in was tried beginning about the middle of November of last year, and I am using that for my guide.

#### Recross Examination

By Mr. Neukom:

As it turned out Judy Beverlin ran away and wouldn't testify as a witness. We couldn't find her for the trial [198] She never testified in that case. I was interested only in local matters.

(Testimony of Anthony George Joseph Joyce.)

As to whether I was interested in any Mann Act investigation—we asked questions or various witnesses on it, but we didn't obtain anything on it. I was not investigating anyone for a violation of the Mann Act.

\* \* \* \* \*

Mr. Lavine: We have one other matter, your Honor, which perhaps counsel can stipulate to. We have a plea in here of once in jeopardy on the theory that the acquittal on the conspiracy charge acquits this defendant——

\* \* \* \* \*

The Court: Well, do you want to move on that now? Are you through with your evidence?

Mr. Lavine: Except for Judy Bradford that we want to put on, yes, your Honor.

The Court: She won't be here until 1:00 o'clock tomorrow?

Mr. Neukom: We will make every effort to get her here [199] at 10:00 o'clock. If Mr. Lavine had told me that he wanted her, we would have had her back.

The Court: We can't go back to her.

Mr. Neukom: I don't know how to reach her.

Mr. Lavine: We will stipulate to that, your Honor.

The Court: She said she would stay in Bouquet Canyon with her mother.

Mr. Neukom: In Saugus. But I will immediately try to call there and get her here.

The Court: She also stated that she was staying

at the Rosslyn Hotel, according to my memory. Mr. Tyler might, in the meantime, see if he can find her so we won't have to be here until tomorrow, if it is not necessary. I don't want to inconvenience the Jury. Moreover, I don't know if I would put it over until tomorrow at 2:00 o'clock.

Well, she has got some bondsman. I know we used to do it. We just told the bondsman to get the witness.

Mr. Neukom: I told him that during the noon hour. I mean, just as soon as Mr. Lavine said he wanted her I told him to bring her.

The Court: All right. Will you try and find out, Mr. Tyler?

Mr. Tyler: Yes, your Honor.

The Court: So that we may have in the next few minutes some assurance as to whether she will or will not be here. [199-a]

\* \* \* \* \*

Mr. Neukom: There was a plea of once in jeopardy made, your Honor.

The Court: In this case? [199-b]

Mr. Neukom: I had an impression that it was as a result of the other case, but it was probably raised as a bar to this case upon the grounds of the other case.

\* \* \* \* \*

The Court: Did you find, Mr. Tyler, whether or not this witness can be here in the morning?

Mr. Tyler: Your Honor, I don't see any reason why she can't get here by tomorrow morning.

The Court: Very well.

Mr. Neukom: We have not located her yet.

Mr. Tyler: She has not been located. She has been seen but not found.

\* \* \* \* \*

Mr. Lavine: At this time, if your Honor please, I move that the record be corrected nunc pro tunc to show that a plea of once in jeopardy was entered in Case No. 15,500.

The Court: Based upon the action theretofore had in 15,499? [200]

Mr. Lavine: That is correct.

The Court: And the action theretofore had was the acquittal of Helen Judy Bradford Beverlin?

Mr. Lavine: That is correct, who was charged jointly with the defendant.

The Clerk: The minutes will read:

“A plea of once in jeopardy, case 15,500, by virtue of the order entered?”

The Court: Not “by virtue of the order” but “by virtue of the acquittal of Helen Merle Beverlin in Case No. 15,499.”

Mr. Neukom: That’s right. [200-a]

Mr. Lavine: So stipulated.

The Court: All right. Then the order will be made to correct the minutes nunc pro tunc as of that date?

\* \* \* \* \*

(Argument concerning jeopardy plea.)

\* \* \* \* \*

Mr. Neukom: You will stipulate, will you not, that Mr. Di Marzo is the same Mr. Di Marzo in 15,499 as Mr. Di Marzo in 15,500, won’t you?

Mr. Lavine: Yes, I will stipulate to that.



Mr. Neukom: All right.

Mr. Lavine: It is a fact that we have to establish, and you stipulate to it, too, I take it?

Mr. Neukom: I certainly do. [201]

\* \* \* \* \*

(Further argument concerning jeopardy plea.)

\* \* \* \* \*

The Court: In this case, from the present state of the record it appears as though it has not been passed on. It was raised at the same time as the plea of not guilty.

\* \* \* \* \*

I am, therefore, going to allow him and overrule your objection to the introduction of any evidence in connection with his plea of once in jeopardy and allow him to present evidence [202]

\* \* \* \* \*

Mr. Lavine: May it please the Court, before I put on this evidence relating to once in jeopardy, may I call one of the investigators from the District Attorney's office back for just one further question?

The Court: I thought Judy Beverlin was coming back this morning.

Mr. Lavine: I think they haven't been able to locate her yet.

Mr. Neukom: I want to explain to your Honor what we did at the close of Judy Beverlin's testimony yesterday afternoon. There was no request at that time that she be here today. Let me explain what we endeavored to do about it. I excused her yesterday noon because no request had been made until 1:00 o'clock

today. Thereupon, yesterday afternoon, since Mr. Lavine requested she be back this morning, I called the bondsman and told him to have her here.

Having no way of knowing just where she was, Mr. Tyler called a location near her mother's, out in Saugus, and we were able to locate her mother at a telephone, and the mother told us to telephone at either Santa Monica or Venice; and Mr. Tyler also notified the mother in another's presence that if she heard from her to have her come in at 10:00 [203] o'clock this morning.

We again called the bondsman, Mr. Glasser, and told him to have her here at 10:00 o'clock this morning, and they have not been able to locate her.

The Court: Is the bondsman present in the courtroom?

Mr. Glasser?

(No response.)

Mr. Neukom: I saw him this morning, a little while ago, and I think he is doing everything in his power to locate her.

The Court: I just wanted to be sure Mr. *Glazier* understood the orders of the court that she be produced this afternoon at 2:00 o'clock. If anybody sees Mr. *Glazier*, I will interrupt the proceedings to further instruct him.

Mr. Neukom: Had we known she was wanted sooner, we would have brought her back.

Mr. Lavine: At the time she was here it was stated she was subject to call at any time, and there was no understanding she was going to be released.

The Court: She is not released.

Mr. Lavine: I appreciate that, your Honor; and we want her for further testimony. If your Honor will permit, we can proceed on this jeopardy question.

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TONY JOYCE

recalled as a witness by and on behalf of the defendant, hav- [203-a] ing been previously duly sworn, was examined and testified as follows:

Redirect Examination

By Mr. Lavine:

So far as I am advised my investigation and the investigation of the District Attorney's office with relation to the matters that Mr. Di Marzo discussed with me is still open. [203-b]

\* \* \* \* \*

Mr. Lavine: Shall I proceed on the jeopardy issue?

The Court: Proceed.

\* \* \* \* \*

Mr. Lavine: At this time, I take it you will stipulate, Mr. Neukom, that in case 15,499-H Crim., U. S. A. vs. Joseph Di Marzo and Helen Merle Beverlin, also known as Judy Bradford, that the following indictment was returned:

Filed July 1, 1942, Violation United States Code, Title 18, Section 88, in the District Court of the United States of America, in and for the Southern District of California, Central Division.

"At a stated term of said Court began and holden at the City of Los Angeles, County of Los Angeles, within and for the Central Division of the Southern

Division of California on the first Monday of February in the year of our Lord, One Thousand Nine Hundred and Forty-two.

“The Grand Jurors for the United States of America, impaneled and sworn in the Southern District of California and inquiring for the Southern District of California, upon their oath present: [204]

“That Joseph Di Marzo and Helen Merle Beverlin, also known as Judy Bradford, hereinafter called the defendants, whose full and true names are, and the full and true name each of whom is, other than as herein stated, to the Grand Jurors unknown, each late of the Central Division of the Southern District of California, heretofore, to-wit: prior to the dates of commission of the overt acts hereinafter set forth, and continuously thereafter to and including March 30, 1941, did then and there knowingly, wilfully, unlawfully, corruptly and feloniously conspire, combine, confederate, arrange and agree together and with each other, and with divers other persons whose names are to the grand jurors unknown, to commit an offense against the United States of America and the laws thereof, the offense being to knowingly, wilfully, unlawfully and feloniously transport in interstate commerce from the Southern District of California, to Honolulu, Hawaii, a certain woman, to-wit: Helen Merle Beverlin, also known as Judy Bradford, with the intent on the part of them, the said defendants, and for the purpose of having said Helen Merle Beverlin, also known as Judy Bradford, practice prostitution and debauchery and for other immoral purposes; [205]

“And the grand jurors aforesaid, upon their oath aforesaid, do further charge and present that at the hereinafter stated times, in pursuance of, and in furtherance of, in execution of, and for the purpose of carrying out and to effect the object, design and purposes of said conspiracy, combination, confederation and agreement aforesaid, the hereinafter named defendants did commit the following overt acts at the hereinafter stated places:

“(1) On January 24, 1941, defendant Joseph Di Marzo, at Wilmington, California, placed Helen Merle Beverlin, also known as Judy Bradford, aboard the steamship ‘Lurline,’ bound for Honolulu, Hawaii;

“(2) On January 24, 1941, defendant Helen Merle Beverlin, also known as Judy Bradford, boarded the steamship ‘Lurline,’ bound for Honolulu, Hawaii;

“Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.”

That thereafter, Helen Merle Beverlin and Joseph DiMarzo were each arraigned on July 13, 1942, and the defendant was arraigned on that indictment, July 29, 1942.

Mr. Neukom: On July 29th, the defendant, Joseph DiMarzo was arraigned, and it was continued to 7-30-42 at 10:00 a.m. [206] for plea.

\* \* \* \* \*

Mr. Lavine: That the case of Helen Merle Beverlin was continued to September 20, 1942, at 11:00 a.m.—Will you stipulate that the Helen Merle Beverlin referred to in this indictment is the same Helen



Merle Beverlin, also known as Judy Bradford, who testified in this court?

Mr. Neukom: I will so stipulate.

Mr. Lavine: I accept the stipulation. Who was the judge presiding?

Mr. Neukom: Judge Hollzer.

\* \* \* \* \*

The Court: I presume you desire to stipulate, Mr. Lavine, as to the indictment you read, that if the clerk were sworn and testified, he would testify as to the indictment on file? [207]

Mr. Lavine: That is correct, that it was filed in the court of this district, and that the defendant, Helen Merle Beverlin in that case was arraigned in a court of this district, to-wit: The court of this district before Harry Hollzer.

The Court: Well, I suppose that stipulation goes to all other things, because, in my judgment, this court, which means the jury, can't take judicial notice of these proceedings in another case, even though it is another case in this district.

Mr. Neukom: I will stipulate such an indictment was filed and is pending.

Mr. Lavine: So stipulated.

The Court: As to all other matters which you propose to read, you wish to stipulate that the clerk, if called, would so testify?

Mr. Lavine: So stipulated.

Mr. Neukom: Well, I would like to hear it read.

The Court: Assuming they are correctly read.

Mr. Neukom: That is all I would want to reserve.

\* \* \* \* \*

Mr. Lavine: "Minutes of July 13, 1942.

"The defendant and counsel for the Government waive a jury trial.

"It is ordered that the cause be, and it hereby is, continued to July 14, 1942, at 2:00 p. m., for setting.

"United States of America, plaintiff, vs. Joseph Di Marzo and Helen Merle Beverlin, alias Judith Bradford, defendants.

"This cause coming on for arraignment and plea of defendants Joseph Di Marzo and Helen Merle Beverlin, alias Judith Bradford, R. K. Lambeau and R. F. Duni, Assistant U. S. Attorneys, appearing as counsel for the Government; George Stahlman, Esq., appearing as counsel for defendant Di Marzo, Victor Bewley, Esq., appearing as counsel for defendant Beverlin; who is present on bond, and L. H. Winter, court reporter, being present and reporting the testimony and the proceedings:

"Defendant Beverlin states her true name is Helen Merle Beverlin.

"Attorney Bewley moves to substitute John S. Cooper, Esq., as counsel for defendant Beverlin, and it is so ordered.

"Attorney Stahlman requests that defendant Di Marzo be produced for arraignment and Attorney Lambeau states that the said defendant is in the custody of the Immigration authorities on a Presidential warrant, and is not [209] under the control of the U. S. Marshal.

"The Court rules that the matter is not now before the court and orders that this cause as to defendant Di Marzo be stricken from the calendar for arraignment and plea.

“Attorney Stahlman asks that he be notified when said defendant is brought before the court for arraignment, and Attorney Lambeau states that the Government will notify him.”

\* \* \* \* \*

Mr. Lavine: But on Monday, July 20, 1942, the following minutes appear:

“United States of America, plaintiff, vs. Helen Merle Beverlin, defendant.

“This cause coming on for plea of defendant Helen Merle Beverlin, R. K. Lambeau, Assistant U. S. Attorney, appearing as counsel for the Government; John F. Cooper, Esq., appearing as counsel for the said defendant, who is present on bond; and F. L. Middleton, court reporter, being present and reporting the testimony and the proceedings: [210]

“The defendant waives reading of the indictment and pleads not guilty.

“Attorney Lambeau states that the Government waives jury trial.

“Linscott Tyler, agent of the Federal Bureau of Investigation, is sworn and testifies in behalf of the Government on examination by Attorney Lambeau.

“Both sides rest.

“The court finds the defendant not guilty, orders that defendant’s bond be, and it hereby is, exonerated, and that the defendant attend before the grand jury on July 22, 1942, at 9:30 a. m.”

Mr. Neukom: I will stipulate they are as you

have so read. And will you stipulate the defendant found not guilty there as only Helen Merle Beverlin?

Mr. Lavine: No, I will not stipulate the only defendant found not guilty is Helen Merle Beverlin, because that is a conclusion of law, and fact, which must be drawn in that case.

The Court: You are asking to stipulate that where the clerk wrote the word "defendant" in the minutes, the clerk meant Helen Merle Beverlin?

Mr. Lavine: I will stipulate to that, and that that is the same Helen Merle Beverlin who was here——

Mr. Neukom: Known as Judy Bradford.

Mr. Lavine: Known as Judy Bradford in this case, or Lani Nevins. [211]

On Wednesday, July 29, 1942, these further proceedings took place:

"United States of America, plaintiff, vs. Joseph Di Marzo, defendant."

No. 15,499—Crim.

"This cause coming on for arraignment and plea of defendant Joseph Di Marzo; R. E. Lazarus, Assistant U. S. Attorney, appearing as counsel for the Government; Geo Stahlman, Esq., appearing as counsel for the said defendant, who is present in custody; and C. W. McClain, court reporter, being present and reporting the testimony and the proceedings:

"The defendant states his true name is as set forth in the indictment, waives reading thereof, and Attorney Stahlman asks additional time for defendant to plead.

“It is ordered that the cause be, and it hereby is, continued to July 30, 1942, at 10:00 a.m., for plea.”

Mr. Neukom: May I ask if the defendant referred to there who asked for additional time is not Joe Di Marzo?

Mr. Lavine: The defendant is Joe Di Marzo.

Mr. Neukom: That it is Joe Di Marzo?

Mr. Lavine: We so stipulate, and Joe Di Marzo is the defendant who is in this case on trial at this time, under indictment 15,500.

Mr. Neukom: So stipulated.

Mr. Lavine: I have the minutes of the indictment 15,500, [212] so I will read them at this time.

The Court: What date?

Mr. Lavine: July 29, 1942.

“United States of America, plaintiff, vs. Joseph Di Marzo, defendant.

“This cause coming on for arraignment and plea of defendant Joseph Di Marzo; R. E. Lazarus, Assistant U. S. Attorney, appearing an counsel for the Government; Geo. Stahlman, Esq., appearing as counsel for the said defendant, who is present in custody; and C. W. McClain, court reporter, being present and reporting the testimony and the proceedings:

“The defendant states his true name is as set forth in the indictment, waives reading thereof, and pleads not guilty.

“It is ordered that the cause be, and it hereby is, continued to July 30, 1942, at 10:00 a. m., for setting.”



Mr. Neukom: That is the case we are now trying.

Mr. Lavine: So stipulated.

Now, on July 30, 1942, in the courtroom of Harry A. Hollzer, District Judge.

“United States of America, plaintiff, vs. Joseph Di Marzo, defendant.

“Case 15,499—Crim.”

That is the case involving the defendant and Helen Merle Beverlin, to which we have adverted—— [213]

Mr. Neukom: A conspiracy charge.

Mr. Lavine: “This cause coming on for plea of defendant Joseph Di Marzo, R. E. Lazarus, Assistant U. S. Attorney, appearing as counsel for the Government; Geo. Stahlman, Esq., appearing as counsel for the said defendant, who is present in custody; and R. T. Doidge, court reporter, being present and reporting the proceedings:

“The defendant makes a statement. Attorney Stahlman makes a statement in behalf of the defendant.

“It is ordered that the cause be, and it hereby is, continued to August 3, 1942, at 11:00 a. m. for plea.

“It is further ordered that Attorney Stahlman may withdraw as counsel for defendant Di Marzo.”

And case No. 15,500—Crim., which is the case on trial now:

“This cause coming on for setting for trial of defendant Joseph Di Marzo; R. E. Lazarus, Assistant U. S. Attorney, appearing as counsel for the Government; Geo. Stahlman, Esq., appearing as counsel for the said defendant, who is present in

custody; and R. T. Doidge, court reporter, being present and reporting the proceedings:

“Attorney Stahlman advises that is an early trial is insisted upon he will have to withdraw from the case. Attorney Lazarus states that the government is insist- [214] ing on an early trial. The court rules that there must be an early trial, and it is ordered that the cause be, and it hereby is, continued to August 3, 1942, at 11:00 a. m., in order to allow the defendant to employ other counsel. It is further ordered that Attorney Stahlman may withdraw as counsel for the defendant.”

You will stipulate those proceedings also involve the same defendant on trial in this court and in both cases?

Mr. Neukom: That is right.

Mr. Lavine: And that those were the minutes relating to both cases?

Mr. Neukom: That is right.

The Court: Up to that time?

Mr. Lavine: Up to that time.

\* \* \* \* \*

Mr. Lavine: “Monday, August 3, 1942.

“United States of America, plaintiff, vs. Joseph Di Marzo, defendant.

“This cause coming on for plea of defendant Joseph Di Marzo; R. E. Lazarus, Assistant U. S. Attorney, appear- [215] ing as counsel for the Government; Morris Lavine, Esq., appearing as counsel for the said defendant, who is present in custody; and R. T. Doidge, court reporter, being present and reporting the proceedings:

“Attorney Lavine moves that the court determine that it has no jurisdiction and states the grounds for the said motion.

“The court orders that any motions be made in writing with the proper authorities and be filed by August 4, 1942, and that the cause be placed on the calendar of August 7, 1942, at 2:00 p. m., for hearing and for plea.”

Case No. 15,500-H. Crim.

Mr. Neukom: That is the case we are now trying.

Mr. Lavine: That is the case we are now trying.

“United States of America, plaintiff, vs. Joseph Di Marzo, defendant.

“This cause coming on for setting for trial of defendant Joseph Di Marzo; R. E. Lazarus, Assistant U. S. Attorney, appearing as counsel for the Government; Morris Lavine, Esq., appearing as counsel for the said defendant, who is present in custody; and R. T. Doidge, court reporter, being present and reporting the proceedings:

“Attorney Lavine moves that the court determine that it has no jurisdiction and states the grounds for the said motion. [216]

“The court orders that any motions be made in writing with supporting authorities and be filed by August 4, 1942, and that the cause be placed on the calendar August 7, 1942, at 2:00 p. m., for setting for trial.”

It is stipulated, is it, that refers to the same defendant here, and the same two cases in the District Court?

Mr. Neukom: Yes.

\* \* \* \* \*

Mr. Lavine: "United States of America, versus Joseph Di Marzo." This is in the minutes of August 8, 1942, No. 15,499—Crim.

"This cause coming on for hearing (1) objections of defendant to jurisdiction of this Court and for plea:

"N. W. Neukom, Assistant U. S. Attorney, appearing as counsel for the Government; Morris Lavine, Esq., appearing as counsel for defendant, Joseph Di Marzo, who is present in custody; and Mack Racklin, Court Reporter, being present and reporting the proceedings:

"Attorney Lavine makes opening statement in behalf of defendant's objections to jurisdiction of this Court, reviewing proceedings antedating the present matter. [217]

"Attorney Neukom makes a statement that the defendant is not a prisoner of war but is merely detained in a detention camp to answer the charge contained in the indictment.

"Attorney Lavine argues further, claiming the defendant is a prisoner of war, and cites authorities in support thereof, and that, therefore, this Court does not have jurisdiction in this case.

"Attorney Neukom states his office has written for authority to dismiss case No. 15,499—Crim."

\* \* \* \* \*

Mr. Lavine:

"Attorney Lavine now argues in support of motion of the defendant for judgment of acquittal."

That is in case 15,499.

Mr. Neukom: The conspiracy case, the one we are now trying.

Mr. Lavine: The one we are trying, in so far as this issue is concerned, but we are not trying in so far as the indictment itself is concerned.

Mr. Neukom: That is right.

Mr. Lavine: So stipulated. [218]

“Attorney Neukom argues in opposition to said motion for a judgment of acquittal inasmuch as Case No. 15,499—Crim. will be dismissed on authority of the U. S. Attorney General.

“Objections and motions for judgment of acquittal are ordered overruled, to which counsel for the defendant notes an exception.

“And, the defendant being now called before the Court for entry of plea, and upon being asked to enter his plea, *pleas* not guilty in case No. 15,500—Crim., it is ordered that Case No. 15,499—Crim.—” there is a typographical error here.

The Court: Correct it now.

Mr. Neukom: It reads: “15,550”, doesn’t it?

Mr. Lavine: That is correct.

Mr. Neukom: It is obvious there was one extra “5” put in, instead of a “0”. That is the pleading to the instant case.

Mr. Lavine: That is the pleading to the case on trial, 15,500.

“——and it is ordered that Case No. 15,500 Crim. be, and it hereby is, set for trial before Judge Hall on September 9, 1942.

“Attorney Lavine also enters a plea of once in



jeopardy in behalf of the defendant in Case No. 15,499—Crim.,——” [219]

The Court: That was changed this morning. That was corrected. Will you read it as corrected. Mr. Clerk?

The Clerk: “On motion of Attorney Lavine it is ordered that an order be entered herein, nunc pro tunc, as of 8-8-42, Attorney Neukom stipulated thereto that a plea of once in jeopardy is entered in case No. 15500 PH, Crim., in behalf of defendant, Di Marzo, based upon the fact that by virtue of the acquittal of Helen Merle Beverlin in Case No. 15,499-H Crim. \* \* \*”

The Court: All right.

Mr. Lavine:

“——and thereupon moves the Court for an order allowing counsel to interview the defendant without restrictions now in force in the detention camp where the defendant is confined; whereupon Attorney Neukom assured the Court and counsel that the camp will be specifically instructed to allow counsel for the defendant and the defendant to prepare for trial without the imposition of the usual restrictions of said camp, but that the defendant cannot be taken to the office of his attorney. Therefore, the Court makes no ruling thereon.”

The Court: Mr. Clerk, your minutes are correct on the plea of once in jeopardy in case 15,500? Have you got that there?

The Clerk: That is in the instant case, your Honor. [220]

The Court: These are combined minutes.

The Clerk: Yes.

The Court: So you had better indicate it is in case 15,500.

The Clerk: All right, your Honor.

The Court: By virtue of the acquittal of Helen Merle Beverlin in 15,499; both cases are instant in those minutes.

The Clerk: If the plea of once in jeopardy is entered herein, which is the case on trial.

The Court: A plea of once in jeopardy on behalf of defendant, in case 15,500.

The Clerk: All right, your Honor.

The Court: Instead of "case herein."

Mr. Lavine: May it be stipulated the minutes we have just read refer to the defendant on trial in this court and to Helen Merle Beverlin, who has been a witness in this court?

Mr. Neukom: So stipulated, with the further understanding, and I think the burden is upon you to establish this point: that the defendant Di Marzo has at no time pled guilty—I withdraw that—has at no time pled in any manner at all in the conspiracy case 15,499.

The Court: Do you accept that stipulation?

Mr. Lavine: No. I am not prepared to accept the stipulation as to not having pled. I am prepared to accept a stipulation that it is the same defendant, that he was [221] brought into court, and that there was a judgment entered as to Helen Merle Beverlin.

The Court: Is it your contention that he did *plea*?

Mr. Neukom: I think the burden is on you to establish that point.

Mr. Lavine: There is some confusion here, your Honor. The minutes seem to show on August 3 that Case 15,499 was continued to August 7, at 2:00 p. m. for hearing for plea. The minutes of August 7, should reveal as to whether——

The Court: Apparently it was continued to August 8, because those would be the first minutes transcribed again.

(Discussion)

\* \* \* \* \*

Mr. Lavine: There was a hearing on motions, but it seems to me the clerk asked him how he pleaded on the questions on both indictments, and I am not certain as to whether he did or didn't. I think the point is not so material. In fact, I contend, regardless of whether he pled or didn't, he was once in jeopardy by reason of the acquittal of Helen Merle Beverlin.

The Court: I think all those things are material.

[222]

Mr. Neukom: If you don't want to stipulate I will put the clerk on in a few minutes.

The Court: The question is implicit as to whether or not a man is once in jeopardy, if he never has been tried, and he can't be tried unless he has pled.

Mr. Lavine: That would be a question of law, your Honor.

\* \* \* \* \*

Mr. Lavine: I will enter into a stipulation subject

to a check with the court reporter and if there is any error we can correct it.

The Court: That Joe Di Marzo never entered any plea either of guilty or not guilty, or any other kind of a plea in case 15,499, other than as your motion for an acquittal might be considered a plea?

Mr. Lavine: No. He entered a plea of once in jeopardy. He entered a motion for judgment and acquittal, which is the same as a plea of once in jeopardy.

The Court: Then your stipulation is that he entered no plea of guilty or not guilty?

Mr. Neukom: That is right. [223]

Mr. Lavine: But he did enter a plea of——

The Court: Of once in jeopardy.

Mr. Neukom: That is correct.

Mr. Lavine: We so stipulate.

Mr. Neukom: And you further stipulate, or should I inquire from the clerk?—that Joe Di Marzo was never brought into court on case No. 15,499, either before a court or a jury impaneled, and tried on case 15,499?

Mr. Lavine: I can't stipulate to that, because that is the very issue. I will stipulate he was not personally present in court when this issue was tried. But my contention is, the trial of Helen Merle Beverlin and her acquittal of the charge of conspiracy would place this issue before a court and jury.

\* \* \* \* \*

Mr. Lavine: ——or a judge sitting in lieu of a jury.

Mr. Neukom: I know your contention. Then you stipulate Joe Di Marzo in fact, was never himself present at any proceedings during the trial of case 15,499, the conspiracy case? [224]

Mr. Lavine: I will so stipulate, that he was not personally present.

Mr. Neukom: Very well.

Do you stipulate, Mr. Lavine, in a felony charge a defendant must be personally present?

Mr. Lavine: No. I won't stipulate to that, because under the doctrine that we are contending for, it wouldn't be necessary for anybody to be present if he was, in fact, legally acquitted.

Mr. Neukom: It is a matter of law.

Mr. Lavine: It is a matter of law for the court to determine.

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### LINSCOTT TYLER,

called as a witness by and on behalf of the defendant, after being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Lavine:

I am the Mr. Tyler referred to who testified in Judge Hollzer's court on this case. I am the investigating agent assigned to this case involving Helen Merle Beverlin and Joe Di Marzo. I am the investigator who appeared before Judge Hollzer in July of this year in relation to Helen Merle Beverlin. I was called as a witness in that case.



(Testimony of Linscott Tyler.)

Other than to give my name and address, I did not testify to any other fact in the case. After I gave my name and [225] address and testified merely as to that, the Government did not put on any other testimony to my knowledge.

Mr. Neukom: I will stipulate none was put on.

By the Witness:

In the transaction involved and which I investigated, I appeared as a witness before the Grand Jury. And I appeared as a witness in both case No. 15,499 and 15,500. I was called to testify regarding my investigation of a trip of Helen Merle Beverlin to Hawaii from Los Angeles, on July 24, 1941; before the Grand Jury in connection with the indictment, 15,499 and indictment 15,500.

Q. By Mr. Lavine: Your testimony in reference to the transaction involved in the identical transaction, did it not?

Mr. Neukom: Objected to on three grounds: one being, calling for a conclusion of the witness; one being, not material, no motion to quash the indictment; and whatever took place before the Grand Jury is secret, and this man is sworn.

The Court: Sustained.

Mr. Lavine: On which ground?

The Court: On all grounds; they are all good.

Mr. Lavine: We offer to prove by this witness that the transaction on which both indictments are founded is the identical transaction as to each indictment, and that it is the identical acts and alleged offenses, and that in his testimony before the Grand

(Testimony of Linscott Tyler.)

Jury, it resulted in the return [226] of both the indictments related to the identical acts, facts, and transactions.

Mr. Neukom: I object to the offer of proof.

The Court: State your grounds.

Mr. Neukom: Inasmuch as the offer is, in its scope, too broad, and too general for this witness even to attempt to comprehend what might be meant by it; that it is not a proper way to establish identity of transactions, because there is no showing to this Court this witness was the only witness before the Grand Jury, and on the further grounds that it would draw a conclusion from this witness if he was to have to testify along the lines as to the offer of proof.

The Court: The objection is sustained, and I think, also, the Court might point out that the testimony before a grand jury is only that degree of testimony which is sufficient to convince them of the probability of a commission of a crime.

Mr. Lavine: May I note an exception? My offer was not made for the purpose of showing what he went before the Grand Jury for, but for the purpose of showing that the identity of the offenses was the same. That is, each of these transactions on which the indictment was based was the identical transaction, and that it was founded on the single testimony, that is, it was founded on the testimony of this witness as to the identical transaction.

The Court: The objection is sustained. The jury will [227] be instructed to disregard the implica-

(Testimony of Linscott Tyler.)

tions as contained in counsel's statement of his offer of proof.

Q. By Mr. Lavine: Now, Mr. Tyler, your investigation of the transaction involving Helen Merle Beverlin and Judy Bradford was of the alleged act on January 24, 1941, relating to one single act on January 24, 1941. Isn't that right?

Mr. Neukom: The question is compound and vague.

The Court: Do you want to object on that ground?

Mr. Neukom: I object to that, yes.

The Court: Sustained.

Mr. Lavine: Exception.

I think, your Honor, I have not read into the record the indictment in this case.

Mr. Neukom: The clerk read it.

Mr. Lavine: May it be deemed——

Mr. Neukom: Reread,

Mr. Lavine: Deemed reread; in support of this plea.

Mr. Neukom: So stipulated.

The Court: Approved.

Q. By Mr. Lavine: Mr. Tyler, there was only one trip under investigation relating to January 24, 1941, involving this defendant and Helen Merle Beverlin. Is that correct?

Mr. Neukom: I object to the form of the question.

Mr. Lavine: So far as he knows.

Mr. Neukom: I further object as immaterial.

The Court: Sustained. [228]

Q. By Mr. Lavine: Mr. Tyler, you didn't tes-

(Testimony of Linscott Tyler.)

tify in 15,499 as to any trip made by anyone, did you?

Mr. Neukom: I object to the question because there is no place fixed, nor a date?

Q. By Mr. Lavine: On July 13, 1941, in the District Court of the United States. You didn't testify as to anyone having made any trips, did you?

A. In what Court?

Q. In Judge Hollzer's Court when you appeared as a witness.

Mr. Neukom: I object to the question on the ground it has already been asked and answered. Is this the date, or the date of July 20?

The Court: He means the date of trial.

Mr. Lavine: The date of trial, whichever it was.

The Court: When Helen Merle Beverlin, or Judy Bradford, was held.

Mr. Neukom: July 20.

The Court: Objection sustained on the ground it has been asked and answered, whatever it was; July 13 or 20. [229]

\* \* \* \* \*

Mr. Lavine: Will we have Helen Beverlin at 2:00 o'clock?

Mr. Neukom: I think Mr. Glasser will do everything he can to try to find her. I think she will be in around 1:00 o'clock.

The Court: What is the name of the bonding company? Give me the file.

Mr. Neukom: This woman, whenever we told

her to come in at such and such an hour, appeared at that hour, excepting yesterday when she had some trouble about her car service.

(Discussion.)

(The following remarks were without the hearing of the jury.)

(Discussion concerning Helen Merle Beverlin.)

\* \* \* \* \*

The Court: What do you propose to prove? That is the point.

Mr. Lavine: I propose to prove that she is acting not in behalf of the defendant, but acting on advice of counsel.

The Court: That is a conclusion.

Mr. Lavine: Well, I expect to prove that she was advised by her attorney not to make any statements, and that she [230] made no statements until after this conspiracy case was dismissed against her.

The Court: The point is: you want to prove she didn't make statements until then, or she was advised by her attorney not to make any until then?

Mr. Lavine: Advised by her attorney.

The Court: That is immaterial.

Mr. Lavine: And she didn't make any until then.

The Court: I imagine to that portion the United States Attorney will stipulate.

Mr. Neukom: I will stipulate.

Mr. Lavine: Then I expect to ask her a number of questions relating to the quarrel that Mrs. Morgan testified to yesterday; that they apparently had quite a quarrel.



The Court: Another quarrel?

Mr. Lavine: Yes, before she went to the Islands, and that in relation to that quarrel she said she wanted to get away from Joe, and that she had made up her mind to leave and that she was going to go away; and that there had been quite a quarrel about that subject. I want to go further into that.

The Court: That is all?

Mr. Lavine: No. I want to ask her further about whether—I want to go into a little more detail with her on the point of whether Mr. Di Marzo had any part in sending her to the Islands. There was one witness who testified that he did [231] send her.

\* \* \* \* \*

The Court: You try to have Miss Beverlin here at 2:00 o'clock.

Mr. Neukom: If I can.

The Court: And I will conclude at that time, if she is not here, whether or not we shall proceed.

(The following was within the hearing of the jury:)

The Court: Has the defendant rested?

Mr. Lavine: Oh, no, your Honor. We have Helen Merle Beverlin to call.

Mr. Neukom: The elusive Miss Bradford. Miss Davidson, would you come over here?

Miss Davidson, your Honor, is the receptionist in our office. She advised me that about 1:00 o'clock, I believe it was, Judy Bradford called it and said that she would be in at 1:30, and then at 1:30, or

thereabouts, Judy Bradford called and stated that she was at a doctor's office but would be here within shortly after 2:00 o'clock. Is that correct?

Miss Davidson: That is correct. [232]

The Court: What doctor's office?

Miss Davidson: She didn't state, your Honor.

The Court: Didn't you ask?

Miss Davidson: I did, but she didn't seem to care to answer me.

The Court: What is that?

Miss Davidson: She didn't seem to care to answer me.

The Court: You did ask her?

Miss Davidson: Yes.

Mr. Neykom: Did you tell her to come here immediately?

Miss Davidson: I told her it was most important to be here because I knew Mr. Neukom was anxious to see her.

Mr. Neukom: I think, your Honor, she will be here in a few moments. That is all we can do about it.

The Court: Well, I want to finish with that matter, as well as the arguments, this afternoon.

\* \* \* \* \*

The Court: Well, I don't think there remains sufficient time this afternoon for arguments. I dislike to cut the defendant off of any opportunity to present his cause. [233]

Mr. Neukom: Can we wait ten minutes, your Honor?

The Court: Well, I am surprised you couldn't

have found out what doctor's office she was in so that we could have talked to the doctor. I suppose that was a medical doctor?

Mr. Neukom: Well, I assume so. I don't know.

The Court: It is safe to assume it wasn't a doctor of divinity.

Mr. Neukom: I will stipulate to that, unless she is something like the Mary of biblical times.

I think, your Honor, that we have tried every way we can to produce her. I have left instructions to hustle her here as quickly as possible.

Mr. Lavine: What? Hustle?

The Court: It will just take ten minutes. I will probably take another recess until 2:30. If she isn't here by that time, I think that fair and reasonable opportunity will have been extended to the defendant so that his rights will have been respected and protected in connection with his desire to further cross examine Judy Beverlin. I should like to urge the United States Attorney to see if he can find out something about——

Mr. Neukom: Her bondsman is here. I believe he has cooperated in every extent possible.

No, he just left a few moments ago. I guess he went up to our office to see if she was up there. He was here when I made my statement. [234]

(Jury Present)

Mr. Neukom: Your Honor, I have no further word, no new developments.

Mr. Lavine: At this time the defendant moves for a continuance to permit the presence of Judy Beverlin for further cross examination.

Mr. Neukom: I oppose upon the ground, your Honor, that counsel did not specify when he wanted her back, and we have done everything in our power to produce her.

The Court: The motion is denied.

Mr. Lavine: Exception noted. Now, at this time the defendant offers to prove by the witness Judy Beverlin, if called, certain matters which I would like to specify, if Mr. Neukom has no objection.

Mr. Neukom: I have no objections to your making your offer of proof before the jury and the court.

Mr. Lavine: The defendant offers to prove through Judy Beverlin that she was never sent to Hawaii by the defendant, and that she would so testify on further cross examination.

The defendant offers to prove also that she was acting under the advice of counsel at the time she was first apprehended; that her counsel was Mr. John S. Cooper and that she declined to testify upon advice of her counsel and not out of any consideration of Mr. Di Marzo, and

That she further did not make any statements until subsequently and after the action had taken place in this court [235] in which she was acquitted, and that was on advice of her counsel, and that the bond was reduced in her case from \$2,000 to \$1,500. I offer to prove also that she had a quarrel with Mr. Di Marzo shortly before she left for Hawaii over Joan Day and that Mrs. Morgan came into the apartment to see her;

That the quarrel related to her wanting to go to Hawaii and the defendant told her he did not want her to go.

That is the substance of my offer of proof at this time.

Mr. Neukom: Your Honor, I oppose the offer of proof upon the ground that counsel had adequate time to have brought out any of those facts. In fact, I think they have all been delved into in some way or other while Judy Bradford was on the stand and they are not now unique. And I further urge that of course it is obvious that counsel's offer of proof is merely an offer of proof not to be considered as any evidence in the case.

The Court: The motion to continue is denied, and the objection of the United States Attorney, on the grounds stated, is sustained. The jury is instructed to disregard the implications contained or which might be inherent in the statement of counsel in his offer of proof.

Mr. Lavine: Exception noted to the matter as ruled on.

The Court: Very well.

Mr. Lavine: Now, there is one other matter that I should like to make an offer of proof on, and that is in [236] connection with the jeopardy matter:

That Judy Beverlin would testify—perhaps the United States Attorney may stipulate to this—that she is the Judy Beverlin who was on the Lurline on January 24th, and that she is the same party on that trip referred to in both indictments.

Mr. Neukom: I will so stipulate.



Mr. Lavine: I will accept that stipulation.

\* \* \* \* \*

Mr. Lavine: We have some motions to make before we actually rest.

The Court: You rest except for your motions?

Mr. Lavine: That is correct.

(The following remarks were made at the bench outside of the hearing of the jury:)

Mr. Lavine: At this time the defendant moves to strike from the testimony all the testimony of Miss Anderson, starting at Page 96, relating to other offenses and other persons not contained in this indictment, and asks that the court instruct the jury to disregard them.

The Court: That was Page 96 and 97?

Mr. Lavine: That's right, Page 96 and 97. [237]

The Court: That motion is denied.

Mr. Lavine: Exception noted. At Page 100 to Page 101, Line 7, Page 101, first——

\* \* \* \* \*

Mr. Lavine: One question that you sustained the objection to. But on Page 100, all of Page 100, you permitted all of that.

The Court: Motion denied.

Mr. Lavine: Exception. Now, Line 7, Page 101, to Line 26—perhaps to keep my record clear, should we say that we are referring to those pages in the reporter's transcript, starting with my question by Mr. Crawford.

The Court: That motion is denied likewise.

Mr. Lavine: Exception. Page 103, Line 4, to

Page 104, Line 3. I might state my ground for the motion. I think your Honor understood that I am objecting to this testimony, and may it be so understood that as to all the previous motions that I have made on the ground that it is other alleged acts, facts, and transactions?

The Court: Than the transportation?

Mr. Lavine: Than the transportation.

The Court: And it is immaterial, incompetent, irrelevant?

Mr. Lavine: Yes, and prejudicial to this defendant by [238] reason of alleged offenses not within the issues here.

The Court: Yes, I understand that.

Mr. Lavine: And you understood as to all the other objections I made?

The Court: Yes. Denied.

Mr. Lavine: Exception. Now, Page 104, Line 23, with reference to Joan Day——

Mr. Neukom: Judy Bradford has arrived, your Honor.

(The following was within the hearing of the jury:)

The Court: Do you move to reopen your case?

Mr. Lavine: Yes, I move at this time to reopen the case for the purpose of putting Judy Bradford on the stand.

The Court: Very well.

Mr. Neukom: No objection.

## HELEN MERLE BEVERLIN

called as a witness be and in behalf of the defendant, having been previously duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Lavine:

On my former examination I testified that I knew Joan Day. I remember an occasion of meeting Joan Day one night in Miss Anderson's apartment when Mr. Di Marzo was there. I don't remember exactly quarreling with Mr. Di Marzo. I didn't have an argument with him over Joan Day that I can [239] remember. I was doing a little drinking. I don't recall. I didn't subsequently quarrel with him over the fact that he was with Joan Day that night, that I can particularly remember. I was drinking. I don't remember much of anything that went on that night. I don't remember quarreling with him. I don't remember going into another room and crying with Miss Anderson. I don't remember it. I don't remember whether I told Mr. Di Marzo that night that I wanted to go away or not. Perhaps I might have told him later on that I wanted to go away, but I don't remember telling him that night.

Q. Well, isn't it a fact that you went to Hawaii because you wanted to get away from Mr. Di Marzo?

Mr. Neukom: I object to that, your Honor, upon the ground it has been asked and answered.

The Court: Objection sustained.

(Testimony of Helen Merle Beverlin.)

Q. By Mr. Lavine: Well, Mr. Di Marzo didn't ever send you to Hawaii, did he?

Mr. Neukom: I object to that as calling for the conclusion of the witness.

The Court: Sustained.

Q. By Mr. Lavine: Mr. Di Marzo didn't ever persuade you to go to Hawaii, did he?

Mr. Neukom: I object to that as calling for a conclusion, asked and answered.

The Court: Sustained. [240]

Mr. Lavine: May I have exceptions to the last two rulings?

The Court: You may have an exception.

Q. By Mr. Lavine: Didn't Mr. Di Marzo ever urge you to go to Hawaii?

Mr. Neukom: Same objection.

The Court: Same ruling, same exception.

By the Witness:

I don't know whether I had occasion to talk to my attorney Mr. John S. Cooper after I was indicted in Case No. 15,499. I don't know anything about numbers. I know the case in which I was indicted and brought into this court.

Q. When you were brought into this court on this case do you remember what your bond was fixed at originally?

Mr. Neukom: I object to that as being immaterial to the case.

Mr. Lavine: Well, I want to show that the bond was lowered after she made her statement, your Honor.

(Testimony of Helen Merle Beverlin.)

Mr. Neukom: I will stipulate that it was.

Mr. Lavine: I will accept the stipulation.

The Court: Proceed.

Q. By Mr. Lavine: Well, Miss Bradford, when you were on your second trip to Hawaii you didn't ever send any letters to your mother, did you?

Mr. Neukom: I object to that as being immaterial to this case, your Honor. [241]

The Court: Sustained.

Q. By Mr. Lavine: You didn't send any letters to anyone during your second trip to Hawaii, did you?

A. I don't remember whether I did or not.

Q. Just before you left for your second trip to Hawaii didn't you have an argument with Mr. Di Marzo in which he stated he did not want you to go to Hawaii?

Mr. Neukom: I object to that as having been asked and answered.

The Court: Sustained.

Mr. Lavine: Exception.

Q. By Mr. Lavine: As a matter of fact, didn't you have quite a quarrel over the matter?

Mr. Neukom: Objected to as being repetitious.

The Court: Sustained.

Mr. Lavine: Exception.

By the Witness:

I can't recall seeing Mrs. Morgan a few days before I went away. I can't remember her coming to my apartment and asking me if I would telephone



(Testimony of Helen Merle Beverlin.)

Mr. Di Marzo, that he was worried because he didn't know my whereabouts.

Q. Do you remember having a conversation with her in which she stated to you that Mr. Di Marzo had said that you and he had quarreled and that he hadn't seen you and she asked you to telephone him?

Mr. Neukom: I object to this as not proper subject matter [242] of impeachment; furthermore, upon the ground that this is, as I understand it, in the nature of affirmative evidence on behalf of the plea in jeopardy. It is not a proper question under that motion, and there was no foundation laid at any time for this testimony, nor did Mrs. Morgan testify in that fashion.

The Court: Well, some of your objections are good, sufficient to sustain the objection.

Mr. Lavine: This testimony is not, I understand, however, being *putting* on in support of defendant's plea in jeopardy?

Mr. Neukom: Oh, well, then, I am mistaken. I had that impression, your Honor.

Mr. Lavine: I stipulated to the fact that I wanted it brought out on the plea of jeopardy, Mr. Neukom.

Mr. Neukom: All right, go ahead.

By the Witness:

I only took one trip on the Lurline starting in January of 1941.

(Testimony of Helen Merle Beverlin.)

Cross Examination

By Mr. Neukom:

I was not late to court because of your statements or any F. B. I. statement to me to be late. I have been ill. I am under the care of a doctor now, and that is the reason why I was late. [243]

\* \* \* \* \*

Mr. Lavine: I don't want to prolong that point unnecessarily, but I don't want any erroneous implications to arise.

Mr. Neukom: I will stipulate that she was not late because of any action upon your part or anybody that might be in any wise affiliated.

Mr. Lavine: We wanted her here.

Mr. Neukom: We both wanted her here.

Mr. Lavine: I will accept the stipulation.

The Court: Where is the bondsman? Mr. Grazier, are you the bondsman?

Mr. Grazier: Yes.

The Court: All right. You may be excused, and there will be an order made exonerating the bond. You are excused.

\* \* \* \* \*

The Court: Do you rest now?

Mr. Lavine: With the exceptions of the motions that we were making at the bench. [244]

\* \* \* \* \*

Mr. Neukom: The Government rests, your Honor.

\* \* \* \* \*

The Court: You may resume your motions.

\* \* \* \* \*

(Thereupon the jury was excused.)

Mr. Lavine: Now, Page 104, Line 4, to Line 11: I move to strike it on the grounds——

The Court: Denied.

Mr. Lavine: Exception. May it be understood that all these motions, unless otherwise indicated, are made on the grounds indicated?

The Court: It may be so understood, yes.

Mr. Lavine: And Page 104, Line 23, to Page 105, Line 1.

The Court: Granted.

Mr. Lavine: Page 105, Line 11, to Line 19.

The Court: Motion denied.

Mr. Lavine: Exception. Page 108, Line 22, to Page 109, Line 2.

The Court: Denied.

Mr. Lavine: Exception. Page 109, Line 24, to Line 26, same page. [245]

The Court: Well, I struck something here on Page 109, and that portion of her testimony may be stricken from the record. I don't know what I was referring to. Oh, she started to say "she had told me that he had taken traveler's . . . " that portion was stricken then and is stricken from the record. That is at the top of Page 109, Line 1. That portion of her testimony, that is a conversation that Judy had with the witness. Then the pending motion from Line 4 to Line 24, is denied.

Mr. Lavine: Page 176, Line 11 to Line 16. I think there was a motion to strike and it was denied, your Honor. So that is covered by a previous ruling.

Mr. Lavine: Page 176, Line 11 to Line 16. I made a motion to strike, which was denied, and apparently there is not a notation of the exception. May I have an exception to the motion to strike?

The Court: The motion to strike was denied, and it is denied again and exception noted.

Mr. Lavine: Also the subsequent testimony of Joan Day, Page 176, Line——

The Court: Your motion to strike that last answer of Joan Day on Page 176?

Mr. Lavine: Yes, your Honor. I am now making a motion [246] to strike the testimony of Joan Day.

The Court: Well, the one before, Lines 14 to 16 “Q. What did Joe say, if anything, when he introduced you to Marion Anderson during the course of that conversation?”

Mr. Lavine: That was my previous motion

The Court: Yes. And that just went to that. Or did it go on over?

Mr. Lavine: Well, now, I am making another motion, from Line 25 on the same page to Page 177, Line 4.

The Court: On what basis? On the basis that they are contradictory? She said she had never done that before, and then she said she was a prostitute?

Mr. Lavine: No, not on that basis, your Honor.

The Court: The motion is denied.

Mr. Lavine: Exception. There are two motions. One of them is Page 176, beginning with Line 11 and down to Line 24. That is, the next motion is

for the immediately following testimony which begins at Line 25, Page 176, and continues to and including Line 4, Page 177.

The Court: They are all denied and exceptions noted.

Mr. Lavine: I made an objection there on Page 177, and then your Honor made the observation that the ruling at that time was without prejudice to renewal of the motion to strike, which motion is now made at this time.

The Court: And which is denied.

Mr. Lavine: Exception noted. On Page 177, the reference [247] to the conversation:

“A. Well, he says that she and another girl was leaving and that it was very expensive . . . ”

I move to strike out the reference “and another girl.” It is not within the issues of this case.

The Court: Motion denied.

Mr. Lavine: Exception.

On Page 210, the testimony of David Goodsell, Line 18, to Page 211, Line 1: I move to strike that.

The Court: Denied.

Mr. Lavine: Exception.

And Line 9 to Line 16, same page.

The Court: Denied.

Mr. Lavine: Page 212, Line 7 to Line 15.

The Court: Denied.

Mr. Lavine: Exception, Page 229, the testimony of Helen Merle Beverlin, Line 7 to Line 23: I move to strike that.

The Court: Denied.



Mr. Lavine: It being understood, of course, my previous objections apply to that?

The Court: Yes. Same ruling.

Mr. Lavine: Page 233, Line 7—that should go to Page 232, Line 21, to Page 233, Line 16. I guess that will go clear over, your Honor, to Page 234, Line 6, all of it.

I move to strike that on the previous grounds stated. [248]

The Court: Everything is material and competent except the remarks of the court. I will have to deny your motion.

Mr. Lavine: We are not quarreling with the remarks of the court, only those of Judy Bradford or Helen Merle Beverlin.

Page 238, Line 1 to Line 16.

The Court: Denied.

Mr. Lavine: Exception. Page 238, Line 23, to Page 239, Line 2—it should go down to Line 11.

The Court: Denied.

Mr. Lavine: Page 269, Line 25—the question goes back to Page 266, Line 24, to Page 267, Line 3, and then there was some argument and it is resumed on Page 268 and Page 269.

The Court: What do you want me to strike? Beginning line what on Page 266?

Mr. Lavine: From Line 24 to Line 3, 267; and then from Line 2, Page 269, down to Line 10, Page 269.

The Court: Granted.

Mr. Lavine: Line 11 to Line 12, Line 18 and 19 of that same page 269.

The Court: The motion is granted.

Mr. Lavine: Page 270, Line 26, to 271, Line 10.

The Court: The motion is granted.

Mr. Lavine: Page 272, Line 3 to Line 16.

The Court: Granted.

Mr. Lavine: All the testimony, Page 273, from Line 1 to 277—[249]

The Court: Everything on 273? 273 is granted.

Mr. Lavine: Wait a minute. All of 273.

The Court: The motion is granted down to—Line 20 of Page 276.

Mr. Lavine: Well, your Honor, how about that Line 5 on Page 276, “Q. Were you present when Dolly purchased the ticket”?

The Court: That may be stricken on the ground it is immaterial, Lines 25 and 26.

“Q. Did he give you any money at that time?

“A. Yes.

“Q. Did he give you some money to purchase your ticket? A. Yes.”

That remains in.

Mr. Lavine: Exception. Page 279, Line 2, testimony of Joan Day, redirect resumed, Lines 2 to 14.

The Court: Your motion is denied.

Mr. Lavine. Exception.

The Court: I suppose you are making the motion to go on over to Page 281, Line 20?

Mr. Lavine: Yes, your Honor.

The Court: The motion is denied.

Mr. Lavine: Exception. If your Honor is going to leave that testimony in from Joan Day, I would respectfully withdraw my motion to strike the testi-

mony on Page 273 because [250] it leaves us without an opportunity to rebut. I withdraw my motion to strike 273 to——

The Court: What line on Page 273?

Mr. Lavine: Line 1, Page 273.

The Court: If you wish to withdraw your motion, why, the matter will be restored to the record. Page 273, Line 1, to 276, Line 19?

Mr. Lavine: That's right. Now, Page 284, Line 14—to Line 25, Page 284.

The Court: Denied.

Mr. Lavine: Exception. Page 285, Line 10 to Line 15.

The Court: Denied.

Mr. Lavine: Page 287, Line 12 to Line 25, Page 287, Helen Merle Beverlin.

The Court: Denied.

Mr. Lavine: Exception. Page 288, Line 7, to—13.

The Court: Denied.

Mr. Lavine: Exception. Did I say "287"? It should be 288.

The Court: Yes, 288 down to Line 25.

Mr. Lavine: Down to Line 25 is correct.

The Court: Denied.

Mr. Lavine: Exception. Page 288, Line 25 to Page 289, Line 4.

The Court: Denied.

Mr. Lavine: Exception. Page 289, Line 5, to Page 291, [251] Line 11.

The Court: Denied.

Mr. Lavine: Exception. Page 292, Line 16, to Page 296, Line 6, all relating to the first trip, your

Honor, which she took, irrelevant, incompetent, immaterial, not within the issues of this case.

Mr. Neukom: It was offered for the limited purpose of intent, your Honor.

Mr. Lavine: Nor corpus delicti established to that particular transaction. Therefore, it is not a similar transaction.

The Court: Denied.

Mr. Lavine: Exception.

\* \* \* \* \*

Mr. Lavine: Now, at this time the defendant again renews his motion for a directed verdict, both on the plea of not guilty and on the plea of once in jeopardy. Your Honor has heard all the evidence in this case. I think that it will not take long to present the matter on both of the motions.

The first motion, your Honor, on the question of a directed verdict, with all the evidence in, was presented to your Honor at the close of the Government's case, and, as pointed out at that time to your Honor, I felt that the [252] evidence was insufficient under the indictment as charged because the indictment in this case charges transportation and causing transportation in interstate commerce for the purpose of prostitution.

Now, certainly very little attention needs to be given to the first portion of that indictment because this defendant did not transport Helen Merle Berlin. He didn't carry her anywhere.

The Court: I don't think the Act contemplates that he should be like the old man on the mountain and carry these girls around piggy back.

Mr. Lavine: No, your Honor. But the cases that relate transportation, cases where a man has taken some girl across the state line in an automobile or by train for immoral purposes, or has gone on a boat trip—I don't remember of any boat trips particularly that I have read—of course, that was in the contemplation of the statute, and I suppose in this day and age an airplane could very well be means of transportation; but there has to be some transportation. Here there was none.

The Court: Here your theory was that he must accompany them?

Mr. Lavine: Yes, or transport them by his means or accompany them, yes; either take them in an automobile which he is driving or accompany them by plane or otherwise. That would be transporting them.

[253]

Now, the other avenue which the statute provides is one that perhaps your Honor has in mind, and it considers his causing them to be transported. Now, did this defendant cause this girl to be transported in interstate commerce under the Act? What did he do that was the causation as defined under the Mann Act cases? Where did he actually, according to her testimony which the Government has produced in this case, cause her to be transported? She went there because she wanted to go.

Now if, as we had the situation here this afternoon, your Honor wanted her to be produced in court and had caused her to be brought in by some compulsion or force or some avenue of causation, that, of course, would be causing her to be transported. But here



there is no evidence, even if we assume that the defendant gave her money to take the trip. The mere fact that he let her have money to take the trip, to go to Hawaii, wouldn't of itself be a causation for the transportation.

I submit, without making too extensive an argument on that point, that issue on the insufficiency of the evidence and urge a directed verdict at this time on that point.

The Court: Motion denied.

Mr. Lavine: Exception. Now, on the question of once in jeopardy my position is very simple.

The Court: Have you changed your position from this morning? [254]

Mr. Lavine: Not at all. It is the same matter that I presented to your Honor.

The Court: This morning you were insisting that it go to the jury. Are you now asking me, as the judge, to pass upon your plea of once in jeopardy?

Mr. Lavine: Oh no, your Honor, I am not. I am asking your Honor to direct the jury to return a verdict for the defendant on the plea of once in jeopardy.

The Court: I see.

Mr. Lavine: This is a motion for a directed verdict.

The Court: All right.

Mr. Lavine: Perhaps I didn't make that clear.

The Court: I understand now. I just wanted to have it clear for the purposes of the record because in the Peters case it seems to make a distinction.

Mr. Lavine: My position is that your Honor should direct the verdict for the defendant on the

plea of once in jeopardy. My ground for that is that under the first indictment, Indictment 15,499, the defendant was technically acquitted by reason of the acquittal of his co-defendant, Helen Merle Beverin. Now, it is true that the Government contends that the indictment specifies the defendant and Helen Merle Beverlin and other persons to the grand jurors unknown. But when the Government puts on its case it did not produce any testimony that there were any other persons to the grand jurors unknown, and certainly they can only be bound by the testimony [255] and we can only be governed by the testimony and we can only be governed by the testimony that is produced in this case, which we have produced here for your Honor. Therefore, we have a situation where there are only two persons who are charged, and the evidence does not show that any more than two persons were involved in the transaction, neither in that case nor in this case is there any evidence that there was any other person other than Helen Merle Beverlin and the defendant Di Marzo.

Therefore, an acquittal by the court of Helen Merle Beverlin operated as an acquittal, as a matter of law, of the defendant Di Marzo. Since he was acquitted on that charge, and the charge being the same transaction, not the identical charge because that was conspiracy there, it was the identical transaction and certainly there could not be the substantive offense without a conspiracy to commit the substantive offense. If there could be no substantive offense without the conspiracy, an acquittal of part of the charge would acquit the defendant of all of the charge. Therefore,

I urge your Honor to direct the verdict for the defendant in this case on the plea of once in jeopardy.

The Court: Motion denied.

Mr. Lavine: Exception.

Mr. Neukom: May I make one motion? Your Honor, I urge in view of the argument of counsel—it apparently is the position that he has now adopted that the previous indictment, [256] 15,499, shows that only two people were involved in the conspiracy—that under the law of the Gebardi case, 287 U. S. 112, the victim and another person cannot be guilty of a crime of conspiracy.

I further urge that if he goes away from that position that under the law——

The Court: What position?

Mr. Neukom: The position that two people were charged with the crime, and only two people, the conspiracy charge.

The Court: Very well.

Mr. Neukom: That if he follows that position, obviously neither one of the parties, or both, could have been found guilty under the Gebardi case, and that the conspiracy indictment, even though it exists, was a nullity.

The Court: I have denied his motion.

Mr. Neukom: But I want to further pursue that.

The Court: You mean you want to educate the court a little bit?

Mr. Neukom: Maybe I want to hear my voice, your Honor. But I assure you that I don't.

My position is simply this: That the burden of proof was upon the defense to establish by a prepon-

derance of the evidence that this defendant was once in jeopardy, having not established, and, as a matter of law, in view of the record and the stipulations that have been entered into, the record as read here, that there is nothing to go before the jury, [257] only a question of law so far as double jeopardy is concerned.

The Court: What is your motion?

Mr. Neukom: The motion of the defense to have submitted to the jury the determination of the plea in jeopardy should not be had.

The Court: What, in effect, you are doing is moving to strike all of the testimony relating to the plea in jeopardy.

Mr. Neukom: That's right.

The Court: And the ground again?

Mr. Neukom: The ground is, as I have endeavored to urge, that the burden was upon the defendant to establish that the offenses were identical, which has not been established. And the law is, and the facts are that they were separate and distinct offenses, conspiracy and the substantive offense.

The Court: That can all be covered in instructions.

Mr. Neukom: Well, I am merely urging that I feel the matter is confusing to this jury in view of the fact the record shows that the defendant was never tried upon the previous case.

The Court: He has a right to submit his evidence on my previous ruling, no matter how slight it might be. That is a question of the weight of the evidence.

Mr. Neukom: Very well.

The Court: That is for the jury to determine. As a matter of law, where I called upon him, it had to be passed on. And I think that under the decisions here, not having [258] been previously passed on by the court and now being insisted on and pressed by the defendant as a right to be passed on by the jury, he has that right.

Mr. Neukom: Very well.

The Court: Your motion to strike is denied. Does everybody rest again now?

Mr. Neukom: We are ready to argue the case, your Honor.

\* \* \* \* \*

(Jury Present)

Mr. Lavine: May I make this one observance, your Honor? There was a point raised early in the proceedings of this case, and in order to complete my record as to that one matter I would like the record to show that the defendant has been in court at all times in the custody of the Immigration Officer, and at times two Immigration Officers.

The Court: The record will show that the defendant has been present at all times in court with counsel and that there has been an Immigration Officer and sometimes two in attendance at all times.

Mr. Lavine: And in the presence of the jury.

The Court: In the presence of the jury.

Mr. Lavine: Further there was some reference made this morning, and I noticed in reading the minutes, and I think counsel will stipulate, that the defendant is an internee; [259] he is interned for the duration of the war.



Mr. Neukom: I object to that, your Honor. It hasn't a thing to do with this case, whether he is interned or not interned.

The Court: I think it is immaterial.

Mr. Lavine: There was reference in the minutes, and I wanted to clear up a statement that was read of Mr. Neukom's in the minutes that this was the sole purpose, so as to complete my record on previous objections that were made.

Mr. Neukom: I didn't read it. You read it.

The Court: Well, I think it is immaterial.

Mr. Lavine: Well, it is a fact going to the objections which I have heretofore made, your Honor.

Mr. Neukom: I am going to point out on that matter, your Honor: counsel makes some stress of that. A party can be interned and can be paroled the next day by the Attorney General.

Mr. Lavine: There is no evidence of that. I assign that statement, your Honor, as incorrect. There is no evidence of any such thing. We are simply referring to the state of the record on the objections to the jurisdiction of the court. I wanted my record to be complete on that matter.

Mr. Neukom: Your Honor, I kept away from that from the very start of this trial. That was brought out solely by Mr. Lavine. [260]

Your Honor, I think as a matter of law possibly I will have to prepare an instruction on that since it has been brought to the attention of the jury, but I think I am correct.

This is not to be taken as law before the jury,

but a person can be interned and can be paroled the next week or next day by the Attorney General. But whether they can or cannot has nothing to do with any crime alleged to have been committed prior——

The Court: I think it is wholly immaterial in the matter of the trial of this case whether he is an internee or what he is.

Mr. Lavine: Exception.

The Court: The matter was material on the matter of law which you argued at the commencement of the trial and upon which the court passed without the presence of the jury and which was the sole concern of the court. I think it is entirely immaterial here for the purpose of the defense, proper defense. The United States Attorney refuses to accept the stipulation.

Mr. Neukom: I will stipulate that he is interned, but I will not stipulate that he is to be interned for the duration because I don't know.

Mr. Lavine: Well, Mr. Neukom, I will accept the stipulation that he is interned now. But do you accept the stipulation further that he has been ordered interned for the [261] duration of the war?

Mr. Neukom: There is not any such order of record.

Mr. Lavine: Have you no such order?

Mr. Neukom: There is no such order. Furthermore, it is entirely immaterial to this case.

The Court: I think it is entirely immaterial.

Mr. Neukom: The Attorney General has ordered him interned. And I think that no argument

should be made upon that score by either side.

The Court: It is immaterial. It is not in evidence. If any objection is made, I shall restrain the argument and instruct the jury to disregard it. How many more motions? No more?

Mr. Lavine: No more.

Mr. Neukom: You have certain readings to make to the jury to strike certain testimony.

Mr. Lavine: Certain testimony, your Honor, that we agreed to strike \* \* \*

The Court: The jury are instructed to disregard the following testimony:

“Q. By Mr. Crawford: Miss Anderson, after that conversation which you just related, did Joan Day then go to work for you?

“A. No. Joan Day did not go to work for me. I didn’t think she was quite experienced enough.”

Mr. Neukom: The rest was Beverlin’s testimony with re- [262] gard to——

The Court: Page 109, line 1: that was previously stricken, the testimony and redirect examination of the witness, Merle Beverlin, or was it Miss Anderson? This is Miss Anderson:

“Q. Who introduced you to Mickey Moore?

“A. Mitzi Bruno did.

“Q. Who is Mitzi Bruno?

“A. Mitzi Bruno is another one of Joe Di Marzo’s girls.”

That is stricken and the jury instructed to disregard it.

The following testimony is stricken from the rec-

ord and the jury instructed to disregard it. This is the redirect examination of Helen Merle Beverlin by Mr. Neukom:

“Q. Now, upon your first trip, I mean, your second trip to Honolulu, that is to say, the one in January 25, 1941 did anyone accompany you in your same cabin or stateroom on that trip?

“A. Yes.

“Q. What was the name of that person?”

The question never got answered.

Mr. Lavine: No, I think it got answered on the next page, your Honor. You have to jump two pages there.

The Court: Oh, yes. Maybe I had better clarify it.

“The Witness: The name was Dianne Stevens.”

I am omitting the colloquy of counsel and the objections. [262-a] This is only the questions and answers.

“Q. By Mr. Neukom: What was her other name, if anything?

“A. Well, I knew——

“I think her other name was Viola.

“Q. Did you ever know whether or not Viola had worked for Joe Di Marzo as a prostitute?

“A. Well, I don't know about working for him as a prostitute. I know the girl was a prostitute.

“Q. Did you ever have any talk with Joe Di Marzo before you set sail when you talked about Viola sailing to Honolulu with you?

“A. Yes. I suggested——

“Q. How long before you sailed to Honolulu was that?

“A. About a week, perhaps. I am not sure of the date.

“Q. That, of course, is the conversation in January of 1941, is it not?”

That is stricken and the jury instructed to disregard it.

“Q. By Mr. Neukom: About how long before?

“A. About a week, perhaps two weeks. I am not sure. I am not definite.

“Q. Where was it?

“A. I am not sure where the place was.

“Q. Was it here in Los Angeles?

“A. Yes, I think so.

“Q. Who was present besides you and Joe?

[262-b]

“A. I believe Joe and I were the only ones present.

“Q. Well, then, what did you say, if anything, with regard to Viola? Or what did Joe say?

“A. Well, I think I suggested that she go along because she was a friend of mine and that I would like for her to go.

“Q. What did Joe say?

“A. Well, that seemed to be quite all right.

“Q. Well, what did he say?

“A. I can't recall the conversation that came up.”

Mr. Neukom: This is all Judy Bradford?

Mr. Lavine: Is that what we restored? Isn't that page 273?



The Court: No, this is page 272, line 16. Page 273 to 276 was restored. That is all.

The portions of the testimony which I read to the jury were stricken from the record on various grounds on motion of the defendant and will be disregarded by you.

(The following discussion was had in chambers in the presence of the Court, and it was stipulated that exceptions thereafter noted by counsel for the defense to the Court's instructions or refusal to give the proposed instructions submitted by the defense was all had in chambers for the purpose of convenience and fully agreeable to the defense, with the [262-c] same effect as though said exceptions to said instructions or exceptions to the refusal of the Court to give specific proposed instructions had actually been made in the courtroom in the presence of defendant and the jury.)

Mr. Lavine: The defendant excepts to the following refused instructions of the defendant:

This one I have put a pencil "A" on it, your Honor, and I would like to number it because there seems to have been no number on it.

The Court: Why not mark those alphabetically?

Mr. Lavine: I will put a separate alphabetical mark on it, "Refused instructions." [262-d]

The Court: That's right. "A", "B", "C", "D", "E", "F", and so forth.

Mr. Lavine: The defendant excepts to the in-

struction "A" refused by the court on the ground that it is a correct statement of the law. It states:

"You are instructed that the testimony of a witness who admits that she has told falsehoods should be subjected to careful scrutiny and considered with great caution and you may reject it."

The defendant excepts to the refusal of instruction "B", numbered at the time as Defendant's Instruction 24, on the ground that it is a statement of the presumption of innocence with which a defendant is clothed.

The defendant excepts to Defendant's Instruction No. 23 being refused, and labelled "C", on the ground that it is an instruction applicable to the facts in the case and is a correct statement of the law relating to the weight to be given to Helen Merle Beverlin.

\* \* \* \* \*

Mr. Lavine: And it is a measure and guide for the jury by which to weigh the evidence of the principal witness of the Government and the alleged victim in this case.

The defendant excepts to the refusal of Instruction "D", labelled Defendant's Instruction No. 22, and now marked [263] "D", which specifies the necessary elements of the crime charged here and those that are essential for the establishment of the Government's case.

The defendant excepts to the refusal of instruction "E", originally marked Defendant's Instruction No. 21, which is applicable to the specific facts

in the case and specifies that the Government must specifically prove the purpose of the trip where the offense is not made out, and the defendant is entitled to an acquittal.

The defendant excepts to the refusal of instruction "F" originally marked Defendant's Instruction 18, on the grounds that it is a correct statement of the law, that even though Helen Merle Beverlin went to the Hawaiian Islands and engaged in prostitution, if she didn't go for that purpose and intent the defendant is entitled to an acquittal, and it is an instruction applicable to the specific point in the case. It is labelled Defendant's Instruction 18.

The defendant excepts to the refusal of Defendant's Instruction 17, originally marked 17 and now labelled "G", which is a correct statement of specific instruction applicable to the facts of this case setting forth the gravamen of the charge. The court has made a notation on the bottom of the instruction that it is covered.

The Court: Well, I think most of those are covered.

Mr. Lavine: And if it is, of course the objection would not be tenable. But in view of the fact that we are making [264] these objections in advance of hearing the court's actual instructions, it appears to be necessary to reserve the——

\* \* \* \* \*

Mr. Lavine: The defendant excepts to the refusal of the Defendant's Instruction "H", labelled Defendant's Instruction No. 16, which is specifically

applicable to the facts in the case, that if Helen Merle Beverlin engaged in prostitution in Hawaii it would be no proof that the defendant knowingly transported her or caused her to be transported and that the burden of proof is upon the Government to show this fact by positive evidence.

The defendant excepts to the refusal of Defendant's Instruction "I", originally marked Defendant's Instruction 15, which specifies that if Helen Merle Beverlin was alone responsible for her transportation, the defendant would not be guilty, and is particularly applicable to the facts as established in this case and is an instruction offered in support of those facts.

The defendant excepts to the refusal of instruction "J", originally marked Defendant's Instruction 14, as to the quantity of proof and that when a witness wilfully testifies falsely to a material matter, you may disregard the whole of her testimony; and that it is particularly applicable to the facts of this case, and the testimony of Helen Merle [265] Beverlin.

The defendant excepts to the refusal of instruction "K", originally marked Defendant's Instruction No. 13, which is particularly applicable to the facts of this case regarding the acts of Helen Merle Beverlin as she herself testified to in this case.

The defendant excepts to instruction "L", marked Defendant's Instruction 11, relating to an essential element of the offense, to-wit, guilty knowledge.

The defendant excepts to the refusal of the instruction "M", originally labelled Defendant's In-

struction No. 10, which states that a woman may be an accomplice to her own transportation where she participates actively in bringing about the same, and that it is a guide for the jury in this particular case in relation to Helen Merle Beverlin.

The defendant excepts to the refusal of instruction "N", originally labelled Defendant's Instruction No. 9, as to the measure and guide of circumstantial evidence in a criminal case, and is a correct statement of the law and particularly applicable to this case.

The defendant excepts to the refusal of Defendant's Instruction "O", originally marked Defendant's Instruction No. 8, which states the correct rule of law regarding the presumption of innocence with which a defendant is clothed and which must be overcome by substantial evidence and which applies to the facts in this case. [266]

The defendant excepts to Instruction No. "P", originally marked Defendant's Instruction No. 7, which goes to the credibility and weight to be given to the testimony of Helen Merle Beverlin as the witness in this case.

The defendant excepts to the refusal of giving Instruction No. "Q", originally labeled Defendant's Instruction No. 6, which goes to the question of the specific intent required to be established in this case and relating particularly to the specific evidence in this case for the consideration of the jury.

The defendant excepts to the refusal of Instruction No. "R", originally Defendant's Instruction No. 4, as to the weight to be given to the testimony



of any witness and particularly that a witness when taking the stand puts her truthfulness in issue in the case.

The defendant excepts to the refusal of Defendant's Instruction "S", originally Defendant's Instruction No. 3, which states the correct principle of law, that if Helen Merle Beverlin was solely responsible for her own transportation, then the defendant must be acquitted. The defendant excepts to that instruction further on the ground that it is a correct statement of the exact measure of proof which the jury must weigh in this case, and it goes to the specific facts of this particular case.

The defendant excepts to the refusal of instruction "SS", numbered Defendant's Instruction No. 37 originally, [267] which gives the correct rule of law, that the Government is bound by the testimony of a witness whom it produces, and in offering Helen Merle Beverlin as a witness they represent that this testimony must be accepted as true.

The defendant excepts to the refusal of defendant's instruction "T" originally labelled defendant's instruction No. 36, as applicable to the particular facts of this case and the fact that it was part of the theory of the defendant's case that he was singled out for invidious treatment by law enforcement agencies.

The defendant excepts to the refusal of "U", originally labelled defendant's instruction No. 33. That also applies the same principle, that the defendant is entitled to the equal protection of the

laws, and that he is singled out for prosecution when other persons are not singled out, he must be acquitted.

The defendant excepts to instruction "V", defendant's original instruction 33, also relating to the quantity or rule of law, rather. The party is bound by the testimony given by or in his behalf, and the Government is bound by the testimony given by Helen Beverlin. Can I persuade you on that instruction?

The Court: No. I have been looking for some authority to that effect for a long time.

Mr. Lavine: Look at the Corlin case.

The Court: I read that and the other case there. But [268] those are conclusions that you draw. If you get another instruction in there, you are entitled to the advantage of any testimony brought out on cross examination, and I have added to it that the Government is likewise entitled to it.

Mr. Crawford: Pardon me. Isn't that the one that says we are bound by the testimony of Judy Beverlin and then states we are bound by her testimony if she said she did or didn't want to go? That would sound as if that were the law, if she said she did or didn't want to.

Mr. Lavine: I make the offer and except to the refusal of the instruction.

The Court: That one and all the others.

Mr. Lavine: I am running out of the alphabet. I have one down to "X" already.

The defendant excepts to the instruction lettered "X", originally defendant's instruction No. 31,

which relates to the question of jeopardy. This instruction places the duty upon the jury to find the facts and sets forth the law applicable to the facts in the case.

The defendant excepts to the refusal of defendant's instruction "Y". This instruction relates specifically to the charge of the statute and confines the statute to the specific charge alleged in the indictment.

The Court: That is a quotation of the statute?

Mr. Lavine: Yes.

The Court: I will read as an instruction on quoting [269] the law the proposed instruction of the Government.

Mr. Lavine: Now, the defendant will except to the proposed instruction of the Government reading the entire statute because the cases hold that each subsection of the statute is a different and separate offense and the defendant is only charged with transporting or causing to be transported in this indictment. He is not charged with the other subsections of the offense. Therefore, to read the entire statute would be to mislead the jury and give them portions of events which are not alleged in this indictment and place the defendant on trial on something not alleged in the indictment. For that reason I submit this defendant's instruction "Y" which covers the particular section of the statute under which the defendant is charged and eliminates the sections of the statute under which he is not charged and which have been defined in

a series of cases each as separate and distinct offenses.

\* \* \* \* \*

Mr. Lavine: I except to the Court's reading the statute.

\* \* \* \* \*

[270]

The Court: I think maybe you are correct there. I will modify this. All right.

Mr. Lavine: With that correction, merely that portion of instruction "Y" from Lines 14 to 19 should be included in the charge. I don't know how you are covering that.

The Court: I have covered that too many times, probably. In reading this over it seems as though every other word says that it is up to the Government to prove beyond a reasonable doubt that he transported or caused to be transported Helen Merle Beverlin.

Mr. Laverne: In instruction "Z" it is applied to the word "cause."

Mr. Neukom: You have the general printed form on "reasonable doubt?"

The Court: Yes, I have the general printed form.

\* \* \* \* \*

Mr. Lavine: I except to the refusal of the Court to give instruction "Z", as a correct statement of the law, a correct definition.

I also except to the refusal of instruction "AA", originally labelled defendant's instruction No. 40 which goes to the question of jeopardy and states

the ground upon which the defendant urges the plea of once in jeopardy in this case. [271]

Also instruction "AB" labelled defendant's instruction No. 38-A which also sets forth principles of law relating to the plea of once in jeopardy and what it is the duty of the jury to determine under that plea.

The defendant excepts to the refusal of instruction "AC", originally Defendant's Instruction No. 26, which also relates to the plea of once in jeopardy and whether a conspiracy involving two persons, if there were only two persons involved, and an acquittal of one, would acquit the other, as applied to the facts of this case.

And Defendant's Instruction "AD", originally Defendant's Instruction No. 34, general instruction, relating to the reasonable construction of the evidence.

Now, the defendant also excepts to the court's instruction—do you want to give this a number?

The Court: That will be No. 3.

Mr. Lavine: May I head this "Court's Instruction No. 3"?

The Court: Well, it is just "Instruction No. 3."

Mr. Neukom: Commencing with the words "I conclude" and ending with the word "defendant."

Mr. Lavine: Which declares "That no person shall be subject to the same offense to be twice in jeopardy of life or limb." The court in that instruction says:

"For the plea of once in jeopardy to be valid, it must appear that the offense is identical in law and



in fact. That is to say, however nearly the of- [272] fenses may be connected in fact, there is no identity so as to constitute jeopardy, if the offenses are not the same in law. And whether the record, as distinguished from the evidence, in Case No. 15,499 shows the identical offense on its face as the face of record in this case, as distinguished from the evidence, is a matter of law. The responsibility for the determination of that question of law belongs to me as the Judge.

“I conclude and instruct that as a matter of \* \* \*”

The Court: “I instruct you.” They omitted the “you.”

Mr. Lavine: “I \* \* \* \* instruct you that as a matter of law the offense charged in case No. 15,-499 is and was not the same as the offense charged against the defendant in this case \* \* \* \*”

With this interpretation of the law, the defendant excepts. It excepts first of all to the court's refusal to let the jury determine the facts and, secondly, to determine whether the facts in 15,499, the case on trial here, and excepts further that the interpretation of the law, as given by the court in this case, is not a correct statement of the law, as one could be in jeopardy if he was tried on part of an offense, no matter under what title it may be, or if he was acquitted on part of an offense, even though not placed on trial.

It is the contention of the defendant here that the acquittal of Helen Merle Beverlin operated as an acquittal, [273] as a matter of law, of the defendant Di Marzo in case 15,499 and that, therefore,

if the jury did find that it was the same defendant, the same facts, that it would have a right to acquit the defendant in case 15,500.

The defendant also excepts to the further language of that instruction: "There is then, not the identity of law and fact necessary to support the plea of once in jeopardy."

The question of fact for the jury to determine is in accordance with the question as to the law. This instruction, therefore, incorrectly sets forth the principles in view of the evidence in this case.

The defendant excepts to the further language of the instruction, "You are hence advised to return your verdict on the defendant's plea of once in jeopardy for the Government and against the defendant" as an incorrect statement of the law and an incorrect conclusion of the facts drawn.

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(Proceedings were resumed in the courtroom in the presence of the jury:)

### THE COURT'S INSTRUCTIONS TO THE JURY

The Court: Gentlemen of the jury, it is now incumbent upon me to instruct you concerning the law.

In addition to the issue of guilty or not guilty the defendant has presented the issue of whether he has been formerly acquitted or once in jeopardy. It will be necessary for you to determine both issues by your separate verdicts. [274] Whatever your

verdict on the guilt or innocence of the defendant, it will be necessary nevertheless to return a verdict on the plea of once in jeopardy. Each plea requires a separate verdict.

You are the sole judges of the facts in this case. You may acquit the defendant of the charge here and also find for the defendant on the plea of former jeopardy; or you may acquit the defendant and find for the Government on the plea of once in jeopardy; or you may convict the defendant and find for the Government on the plea of once in jeopardy. But each finding is separate and distinct and must be the result of your own individual opinion and judgment based on these instructions and the facts in this case.

You are not to be prejudiced in any way on the issue of not guilty or guilty by reason of the plea or verdict that you may find in this case in connection with the evidence regarding jeopardy. Each is a distinct issue for you to decide. The Court's instructions on each are to be considered independently of the other.

The Constitution of the United States declares:

“That no person shall be subject for the same offense to be twice in jeopardy of life or limb.”

Where a defendant relies upon this clause of the Constitution he makes what is called a plea of “once in jeopardy.” The defendant in this case has made such a plea.

The indictment in Case No. 15499 of this Court—that [275] is not the number of this case, it is 15,-

500—and the Minutes thereon were read in evidence. The defendant contends that inasmuch as he and Helen Merle Beverlin were jointly charged in that case with conspiring to violate the Mann Act, and that inasmuch as Helen Merle Beverlin was acquitted in that case he was, solely by operation of law, likewise acquitted, and that he was thus placed in jeopardy for the offense for which he is now on trial.

For the plea of once in jeopardy to be valid, it must appear that the offense is identical in law and in fact. That is to say, however nearly the offenses may be connected in fact, there is no identity so as to constitute jeopardy, if the offenses are not the same in law. And whether the record, as distinguished from the evidence, in case No. 15499, that is, the other case, show the identical offense on its face as the face of the record in this case, as distinguished from the evidence, is a matter of law. The responsibility for the determination of that question of law belongs to me as the Judge.

I conclude and instruct you that as a matter of law the offense charged in case No. 15499, the other case, is and was not the same as the offense charged against the defendant in this case.

There is then, not the identity of law and fact necessary to support the plea of once in jeopardy.

You are hence advised to return your verdict on the [276] defendant's plea of once in jeopardy for the Government and against the defendant; but you must, nevertheless, return a verdict.

By the finding of an indictment no presump-

tion whatsoever arises to indicate that a defendant is guilty, or that he has had any connection with, or responsibility for, the act charged against him. A presumption, as used in that sentence and as used throughout the trial and in the following instructions, is a deduction which the law expressly directs to be made from particular facts. A defendant is presumed to be innocent at all stages of the proceeding until the evidence introduced on behalf of the Government shows him to be guilty beyond a reasonable doubt. And this rule applies to every material element of the offense charged. Mere suspicion will not authorize a conviction. A reasonable doubt is such a doubt as you may have in your minds when, after fairly and impartially considering all of the evidence, you do not feel satisfied to a moral certainty of the defendant's guilt. In order that the evidence submitted shall afford proof beyond a reasonable doubt, it must be such as you would be willing to act upon in the most important and vital matters relating to your own affairs.

Reasonable doubt is not a mere possible or imaginary doubt or a bare conjecture; for it is difficult to prove a thing to an absolute certainty.

You are to consider the strong probabilities of the [277] case. A conviction is justified only when such probabilities exclude all reasonable doubt as the same has been defined to you. Without it being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered



in connection with and as accompanying all the instructions that are given to you.

In judging of the evidence, you are to give it a reasonable and fair construction, and you are not authorized, because of any feeling of sympathy or other bias, to apply a strained construction, one that is unreasonable, in order to justify a certain verdict when, were it not for such feeling or bias, you would reach a contrary conclusion. And, whenever, after a careful consideration of all of the evidence, your minds are in that state where a conclusion of innocence is indicated equally with a conclusion of guilt, or there is a reasonable doubt as to whether the evidence is so balanced, the conclusion of innocence must be adopted.

You are the sole judges of the credibility and the weight which is to be given to the different witnesses who have testified upon this trial. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies; by the character of his testimony, or by evidence affecting his character for truth, honesty and integrity or his motives; or by contradictory evidence. In judging the credibility of the witnesses in [278] this case, you may believe the whole or any part of the evidence of any witness, or may disbelieve the whole or any part of it, as may be dictated by your judgment as reasonable men. You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the re-

lations which he bears to the Government or the defendant, his interest in the outcome, and the manner in which he might be affected by the verdict and the extent to which he is contradicted by the verdict and the extent to which he is contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility. The masculine includes the feminine in these instructions. If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury should *district* his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' testimony.

You are not limited in your consideration of the evidence to the bald expressions of the witnesses; you are authorized to draw such inferences from the facts and circumstances which you find have been proved as seem justified in the light of your experience as reasonable men. An inference is a deduction which the reason of the jury makes from the facts proved, without an express direction to that effect in the law. [279]

There are two classes of evidence recognized and admitted in courts of justice, upon either of which juries may lawfully find an accused guilty of crime. One is direct or positive testimony of an eye-witness to the commission of the crime; the other is testimony in proof of a chain of circumstances pointing sufficiently strong to the commission of the crime by the defendant, and which is known as circumstantial evidence.

Circumstantial evidence may consist of admissions by the defendant, plans laid for the commission of the crime; in short, any act, declarations or circumstances admitted in evidence tending to connect the defendant with the commission of the crime.

Where the evidence is entirely circumstantial it is necessary before you can convict that the evidence be not only consistent with the guilt of the defendant, but inconsistent with any other rational conclusion.

Indirect evidence is that which tends to establish the fact in dispute by proving another and which, though true, does not in itself conclusively establish that fact but which affords an inference of its existence.

The defendant is entitled to the same fair trial as any person of American citizenship and regardless of whether he is confined in an internment camp.

You must disregard the remarks of the prosecutor as to whether the defendant might be paroled from the intern- [280] ment camp, as this is a matter entirely within the scope of the persons having him in custody.

You are instructed that the defendant is charged in this indictment with a violation of the White Slave Traffic Act, more commonly known as the Mann Act. The section of the Act which the defendant is charged with violating provides as follows:

“\* \* \* Any person who shall knowingly trans-

port or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice \* \* \* shall be deemed guilty of a felony and upon conviction thereof shall be punished \* \* \*."

You will note that I have omitted reading to you what the punishment, if any, would be if the defendant is found guilty, for the punishment is a matter solely to be decided by the Court should you find the defendant guilty.

You are instructed that "debauchery" means that the girl is to be subjected repeatedly to unlawful sexual [281] intercourse, fornication or adultery.

You are instructed that Webster's Dictionary defines the word "transport" to mean "to carry or convey from one place to another." The word "cause" means to "effect a thing, as an agent; to bring it about."

You are not to be prejudiced against the defendant by reason of the nature of the charge, or by reason of any testimony regarding any violations of local law or to any immoralities, as these are not the issues in this case. It is your duty, regardless of any testimony that may have been pro-

duced along this line, if you have a reasonable doubt as to the guilt of the defendant on the charge of transporting or causing Helen Merle Beverlin to be transported from Los Angeles to Hawaii, to acquit him.

The Federal Courts deal only with violations of the federal law, and where the evidence in a prosecution under the Mann Act is insufficient to show a violation of the statute, a conviction cannot be sustained no matter what acts of impropriety the parties may have been guilty of,—they being amenable for such acts to the local authorities and not to the Federal Government,—if the evidence shows that they are guilty of any such improprieties, and if you find that the evidence is insufficient to show that the defendant, Joseph Di Marzo, transported or caused Helen Merle Beverlin to be transported, you must acquit him.

There is no presumption in law that a person who has [282] been a prostitute will continue to be one, or that she may not stop at any time, and there is no presumption in law that when Helen Merle Beverlin left Los Angeles on or about January 24, 1941, she intended to engage in or be in the business of prostitution when she reached Hawaii. This is a fact to be proved, like any other fact in the case, and it is incumbent upon the Government to prove that Helen Merle Beverlin left Los Angeles for the purpose of engaging in prostitution and that this knowledge was brought home to Joseph Di Marzo at the time she left Los Angeles.

If you find that Helen Merle Beverlin commit-



ted acts of immorality in Hawaii, that alone would not make the defendant guilty of violating the White Slave Act, for the gravamen of the offense is the interstate transportation with intent at the time of the transportation that Helen Merle Beverlin engage in prostitution or sexual immorality.

If the Government established that Helen Merle Beverlin engaged in sexual intercourse after she left the United States, such fact alone would not prove that the defendant transported or caused Helen Merle Beverlin to be transported for such immoral purpose or with such intent.

If you find that the defendant did not transport her or cause her transportation, you must acquit him regardless of any other causes or other reasons or persons who might have brought it about, if they did.

You are instructed that if you find that Helen Merle [283] Beverlin was solely responsible for her own transportation, then you must acquit the defendant.

The character or reputation of the woman named in this indictment is not an issue in this case and the mere fact that she may have been a confirmed prostitute, at all times mentioned in the indictment, is immaterial, excepting insofar as it may have a bearing on the purpose of the alleged transportation or the weight of her testimony, and you are not to consider the fact, if it be a fact, that she willingly assented to the transportation.

In order to constitute the offense with which the defendant is charged, it is not necessary that

such woman or girl actually be placed in a house of prostitution or otherwise debauched if the intent of the defendant is clear. If, however, it appears that such defendant so intended by the transportation of such woman or girl to bring about any of the foregoing ends, then and in that case he is guilty of the offense charged.

The woman transported is not an accomplice to her transportation whether she goes willingly or unwillingly and her testimony may be viewed in the same light that any other witness' would be viewed and need not be corroborated if you are willing to believe it alone and without corroboration.

Compulsion is not one of the essential elements of the crime charged. In other words, in order to find the defendant [284] guilty it is not necessary that you find that he forced Helen Merle Beverlin to go from Los Angeles to Honolulu, Territory of Hawaii, against her will and without her consent.

It is sufficient to warrant a verdict of guilt if you are convinced beyond a reasonable doubt from the evidence before you that the defendant knowingly induced, persuaded, aided, abetted, or caused this woman to go from Los Angeles to Honolulu with the intent and purpose on the part of the defendant that she would engage in prostitution or debauchery, or any other immoral purpose, or that he aided or assisted in knowingly persuading, inducing, or enticing her and that he thereby knowingly caused or aided or assisted in causing this

woman to be carried as a passenger on a common carrier in interstate commerce, that is to say, upon a steamship sailing from the Port of Los Angeles to the City of Honolulu, Territory of Hawaii. Whether or not the woman went as is charged, if you find she so did, with or without her consent, is immaterial.

The giving of money to Helen Merle Beverlin would not itself be a violation of the law, nor would receiving money from Helen Merle Beverlin after she returned from Hawaii, be a violation of the law in question. It is only if the defendant transported or caused the transportation of Helen Merle Beverlin in interstate commerce that would be a violation of the law.

The defendant may be found guilty of the offense charged [285] in the indictment even though he in fact did not directly purchase her steamer ticket, and even though the money which was actually used was not the money that he provided, for the law does not require that the woman who is transported in interstate commerce for immoral purposes must use the identical money that is received from the defendant. It is sufficient if he aided or abetted in any wise the woman in connection with her transportation from Los Angeles to the Territory of Hawaii with the intent upon his part that the purpose of this transportation was to have Helen Merle Beverlin engage in prostitution. And this is true even though in fact the woman so transported did not actually engage in prostitution when she arrived at the destination.

As a matter of law if you find beyond a reasonable doubt the defendant did transport, cause to be transported, or aid or assist the transporting of Helen Merle Beverlin from Los Angeles County to the City of Honolulu, Territory of Hawaii, with the intent on his part for the purpose of having said woman practice prostitution, or for other immoral purposes, the Territory of Hawaii is such a place or territory as comes within the jurisdiction of the Act. In other words, if a person transports or aids or assists the transporting of a woman from the United States to the Territory of Hawaii with the intent and purpose to have such person practice prostitution, such a place, namely the Territory of Hawaii, is the same as though the person had [286] been so transported between one state and another.

The offense of interstate transportation of a woman for immoral purposes is complete the moment the woman has been transported across the state line with the immoral purpose or intent in the mind of the person responsible for her transportation; and the immoral conduct and relation of the parties, if they either did or did not exist, are in no wise elements of the offense.

The means of transporting a woman across the state line or from this State to the Territory of Hawaii, for the purposes denounced in the statute, the violation of which the defendant is charged, is not material. Transportation could be effected by the person either travelling on steamship or airplane or any other means that was utilized in causing her



transportation from Los Angeles to the City of Honolulu, Territory of Hawaii.

A defendant may rely on the evidence produced on cross examination from the Government's witnesses for his defense, and you must consider any matters so brought out in his behalf. The converse is equally true of the Government's case and the defendant's witnesses.

You are instructed that intent is a material factor in this case and unless the defendant had the intent to do as charged in the indictment, he cannot be found guilty. The law presumes that every man intends the natural and ordinary consequences of his acts. There must be an intent [287] to commit the unlawful act and that intent must be corrupt.

Intent is a state of mind. We do not have the faculties of being able to dissect a man's mind, ascertain what his intent was as of any given time or at the time as charged in the indictment. Consequently, to determine what a person's intent is, or was, it is proper to consider all the facts and circumstances of the case that tend to shed light as to what was the defendant's intent as of the period charged in the indictment. In this connection it is competent to consider the defendant's previous and subsequent acts and declarations which tend to shed light to determine what his intent was at the specific time charged in the indictment. In other words, in arriving at what was the intent of the defendant on or about January 24, 1941, at the time the Government charged the defendant did unlawfully cause



to be transported Helen Merle Beverlin, also known as Judy Bradford, from Los Angeles, California, to the City of Honolulu, Territory of Hawaii, with the intent on his part and for the purpose of having said Helen Merle Beverlin practice prostitution and debauchery, and for other immoral purposes, you are at liberty in arriving at the intent that may or may not have existed at the time as charged, to consider the actions and declarations of the defendant which occurred before and after this date that were admitted in evidence.

Evidence which has been admitted in this case which infers that the defendant has aided or assisted the trans- [288] porting of other women in interstate commerce for the purpose of prostitution, or any evidence which tends to show or from which it may be inferred the defendant aided or assisted or caused to be transported Judy Bradford, also known as Helen Merle Beverlin, from Los Angeles to Honolulu, Territory of Hawaii, before the time as charged in this indictment, is only admitted upon the question of intent that may or may not have existed upon the part of the defendant at the time as charged in this indictment.

In other words, other similar transactions are admissible only for one purpose, that is, to show the existence or non-existence of the intent as charged in the indictment.

With relation to the testimony of those witnesses pertaining to their having been employed in prostitution by the defendant, you are to confine the use of that particular testimony entirely to the question

of intent or purpose as it relates to the crimes which are charged in the indictment. Even if you should find that the defendant was immoral or had associated with people engaged in immoral practices, such as prostitution, or had committed other violations, he is not on trial for those. But you may take the testimony of those witnesses with what credibility you give them and determine whether or not that throws any light upon the question of intent of the defendant as charged in the indictment, namely, as to the transportation of the person named in the indictment, for the purposes [289] specified.

As stated, the statute makes the intent and purpose an element of the crime, and if the journey was planned with no immoral purpose at the time, no crime was committed no matter what may have occurred thereafter. It is the immoral purpose which renders such interstate commerce criminal. The immoral relationship, standing alone, unconnected with interstate commerce, does not violate the Act. Inducing a girl to go from one state to another with any other purpose, except the formed intent at the outset, is insufficient to constitute a violation of the statute. Therefore the essential elements of the offense as defined in the statute are (1) knowingly transporting or causing to be transported in interstate commerce a woman, or a girl, (2) for the purpose of prostitution or debauchery or for any other immoral purposes.

You are instructed that there is no excuse or defense to the defendant on trial in this case that others are not on trial, or possibly have not been in-

dicted, even though you may believe that others were implicated in the charge now before you. You are to consider the guilt or innocence of the defendant Di Marzo without regard to the culpability, or lack of culpability of others not on trial, or possibly as to others who may not have been indicted.

There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that [290] by which men give their attention to any question depending upon evidence presented to them. You are expected to use your good sense, consider the evidence for the purposes only for which it has been admitted, and in the light of your knowledge of the natural tendencies and propensities of human beings, resolve the facts according to deliberate and cautious judgment; and while remembering that the defendant is entitled to any reasonable doubt that may remain in your minds, remember as well that if no such doubt remains the Government is entitled to a verdict. Jurors are expected to agree upon a verdict where they can conscientiously do so; you are expected to consult with one another in the jury room, and any juror should not hesitate to abandon his own view when convinced that it is erroneous. In determining what your verdict shall be you are to consider only the evidence before you. Any testimony as to which an objection was sustained, and any testimony which was ordered stricken out, must be wholly left out of account and disregarded. The opinion of the Judge as to the guilt or innocence of a defendant, if directly or in-

ferentially expressed in these instructions, or at any time during the trial, is not binding upon the jury. For to the jury exclusively belongs the duty of determining the facts. The law you must accept from the Court as correctly declared in these instructions.

You will now retire to the jury room—— [291]

Mr. Lavine: May it please the Court, there is a stipulation which I think we should enter at this time, that we have excepted to certain refused instructions outside of the presence of the jury, which should be deemed as excepted to before the jury or excepted to before the Court and passed upon by the Court, so that the record will show that.

Mr. Neukom: We will stipulate, your Honor, that all the objections that were made in the record may be deemed to have been now and the Court's denial of them, those that were denied, the exceptions granted to the defendant.

Mr. Lavine: Now, your Honor, there were three or four that your Honor read that were apparently not in the group in which you gave instructions rather than refused them as to which no exception was noted because I did not wish to interrupt your Honor.

The Court: Very well.

Mr. Lavine: There was an instruction which your Honor gave that there was no excuse or defense to the fact that there were others not charged. We except to that instruction, according to our offer of proof, that there was specialized treatment or in-



sidious treatment to this defendant, and that we except to that charge.

We except also to the charge as given under the definition of the statute and in which I thought your Honor was going to stop at a certain point, but your Honor went on to [292] read other portions of the statute which were not included in the indictment as alleged here, that is, aiding and abetting and also persuading, inducing, etc., which are in the statute, but not in the indictment and, therefore, went beyond the scope of this indictment and to which I, therefore, except.

Mr. Neukom: I think they are proper, your Honor, under 18 U. S. C. A. 550. A person can be charged as a principle who aids or abets.

The Court: He is making his exceptions. I have come to my conclusions that he is wrong.

Mr. Lavine: Yes, your Honor. And your Honor gave no definition of the words "aid and abet," and in view of the instructions that your Honor gave I am excepting to the instructions on the ground that it is an incorrect statement and beyond the scope of this indictment.

The Court: Do you wish an instruction as to what aider or abetter are?

Mr. Lavine: Yes, your Honor. I think that is material in view of the fact that your Honor gave the instruction.

The Court: All right.

Mr. Lavine: Your Honor gave the instruction also that a woman is not an accomplice. I feel that in view of the Holtey case that she is an accom-



plice. I except to the instruction because where she directly participates in any particular act, she would be an accomplice under the particu- [293] lar case that I cited.

The Court: My judgment in this case was overruled by the Gebardi case, a later case.

Mr. Lavine: I think the Gebardi case distinguished it from the former case, and, therefor, did not overrule it. And I except to your interpretations.

The Court: I think it is defined in the statute.

Mr. Lavine: There is a state definition, your Honor, which is——

The Court: I think there is one in the federal statute.

Mr. Lavine: I simply wanted the word “abet” defined. I may have a stock instruction used in the state courts, your Honor.

Then the defendant also wishes to except to the use of “other acts and transactions” which your Honor gave some instructions regarding, as being admissible under any circumstances here in relation to subsequent acts and transactions.

The Court: Your exceptions are noted of record and denied, except “aider and abetter.” If I can find it, I will instruct on the statutory definition on that.

Mr. Lavine: I withdraw my request, your Honor, for that as I view it now, for the reason that the statute makes such an aider and abetter a separate offense which is not alleged in this indictment.

It is my view that the statute [294] provides for each violation under a separate sub-head and that the charges of aiding and abetting, persuading or inducing, are each separate and distinct offenses which must be alleged by indictment and which are not alleged in this case.

I wish your Honor would also instruct the jury that any of these arguments that we have made are not binding on them nor to be considered.

The Court: Yes. The jury are instructed to disregard the remarks of counsel and not to consider them the law. You will consider the law that I give you.

Mr. Lavine: My position on that, your Honor, I think I have stated. Therefore, I withdraw any requested instruction on that subject in view of the fact that the indictment does not contain any such allegation. It would require a separate and distinct indictment. There would be a separate statute on that subject, your Honor.

The Court: No, there isn't. Title 18, 550?

Mr. Neukom: 550.

Mr. Lavine: I am abandoning my request on the grounds specified.

The Court: Do you desire an instruction on "aiding and abeting"?

Mr. Neukom: No.

The Court: And you withdraw your request?

Mr. Lavine: Yes. [295]

Mr. Neukom: Very well.

The Court: There are two. The jury will retire to the jury room and elect one of your members

as foreman. There will be handed to you by the bailiff two forms of verdict. One of them reads as follows:

“We, the jury in the above-entitled case, find for the (Government) (Defendant, Joseph Di Marzo) on said defendant’s plea of once in jeopardy.”

When you have reached a conclusion on that, the foreman will sign it and strike out either the word “Government” or “Defendant, Joseph Di Marzo.”

If you find for the Government, you strike out “Defendant, Joe Di Marzo.” If you find for the defendant, you strike out the “Government.”

The other verdict:

“We, the Jury in the above-entitled case, find the defendant, Joseph Di Marzo (blank),” that is, guilty or not guilty, “as charged in the Indictment.” It is to be signed by the foreman.

When all of you have reached a verdict, it is necessary for you to have a unanimous verdict in a federal case. Therefore, when all of you have agreed, you will advise the bailiff and return to this courtroom.

Mr. Neukom: May I, your Honor, respectfully request the Court to advise the jury, in view of your instructions, that as to the former jeopardy in the verdict that it is [296] their duty to strike out the words “defendant, Joseph Di Marzo” because they have been instructed to find for the Government?

The Court: No.

Mr. Lavine: I except to the remarks of Government counsel at this time.

The Court: You don't need to except to them. I am declining his request. I have advised the jury.

Mr. Neukom: I see.

The Court: I have instructed them what the law is and advised them to return their verdict as to the defendant's plea of once in jeopardy either for the Government or for the defendant.

Mr. Neukom: Very well.

The Court: And in an advisory capacity that is as far as I can go. You still must reach your verdict yourselves, gentlemen.

Mr. Lavine: Exception noted, your Honor, to the advice.

The Court: It has been stated in the state courts that where the jury does not follow the judge's advice that the judge sometimes grants a new trial.

Mr. Lavine: They can't on that one, though.

Jury Retires. [297]

JURY RETURNS

[Title of District Court and Cause.]

VERDICT

“We, the Jury in the above-entitled case, find for the (Government) \* \* \* on said defendant’s plea of once in jeopardy.

(Signed) H. M. BURGESSON

Foreman of the Jury

“Dated: Los Angeles, California, September 18, 1942.”

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[Title of District Court and Cause.]

VERDICT

“We, the Jury in the above-entitled case, find the defendant, Joseph Di Marzo, guilty as charged in the indictment.

(Signed) H. M. BURGESSON

Foreman of the Jury. [298]

Dated: Los Angeles, California, September 18, 1942.”

The Court: Do you wish the jury polled?

Mr. Lavine: Yes, your Honor.

The Court: All right. Will you poll the jury on each verdict?

Mr. Lavine: Will you explain to the jury, your Honor, the purpose of polling?

The Court: I don’t know that it is necessary to explain the purpose of polling.



Mr. Lavine: Sometimes jurors don't understand that this is their opportunity to express their individual opinion.

The Court: The individual's decision, not opinion.

(July Polled.)

(Thereupon the Jury was excused.)

The Court: Now, the procedure on conviction under the state law: There is a requirement of sentence within a certain period of days, and not before a certain period of time.

Mr. Lavine: There is no time within which——

Mr. Neukom: There is some doubt on that, your Honor?

The Court: Sir?

Mr. Neukom: I have never been able to straighten myself out on it. There is some doubt on it. There is some [299] Supreme Court rule that a person must be sentenced within, as I understand it, five days after conviction unless he himself waives it or does not require it.

The Court: Well, there is a provision that they shall be sentenced promptly. Then there is a provision that they must file a notice of appeal within five days. So they can't appeal before they are sentenced.

Somebody figured out—maybe a Supreme Court Judge—that, therefore, they had to be sentenced within five days.

Mr. Neukom: We do not, your Honor, as long as the defendant makes no point as to whatever your Honor's pleasure is.

The Court: That is the sentence here? What is that section?

Mr. Neukom: 18. 398 is the section.

Mr. Lavine: In this case, if your Honor pleases, it is an idle act in view of the situation the defendant is in. I think your Honor understands the situation. He is in incarceration in one place as much as another, and I assume, however, that whatever your Honor's judgment will be in the matter on any other proceedings that we might want to follow here in respect to this matter, as far as either——

The Court: Well, is the defendant ready for sentence at this time? In whose custody does he go now? Ordinarily he is remanded to the custody of the marshal. He is now in the custody of the Immigration office. [300]

Mr. Neukom: That is the thing, your Honor, that I would appreciate some advice on.

The Court: Well, I have got to make a decision right now.

Mr. Neukom: Unless the defendant urges that, I would like to get the advice of the Attorney General on that because the defendant is still in the custody of the Immigration authorities and they are charged with the responsibility, in abeyance to the presidential warrant, the order of internment, to take him back to the camp. I haven't been able to determine what is the law under that circumstance because I don't anticipate such a thing as that until the case is over with.

The Court: Well, I think that some decision along the line is going to have to be made, and I must make it now whether or not he shall be remanded to the custody of the marshal and the case continued for sentence or whether or not he shall be remanded to the custody of the Immigration officers. He, of course, is in the custody of the United States in either event.

Have you any ideas you wish to impress upon the Court with respect to that?

Mr. Lavine: Well, we naturally take the position, your Honor, that he is still in the custody of the Immigration officers and should remain there and that further, of course, in order that my rights may be preserved I take the position [301] that all these proceedings were without jurisdiction because he is still in the custody of the Immigration Department and never was released actually for purposes for granting this court jurisdiction.

I simply preserve my record on that phase of it. However, I feel that your Honor will not be prejudiced nor will the Government be prejudiced by any order of your Honor in continuing him in the Immigration officers' custody. He is still in custody, and we will certainly not raise any objections over his being in that custody.

Mr. Neukom: Your Honor, I would prefer that he would remain there. Of course, while he would come before you, if he is put into the custody of the marshal, he then is subject to applying for release under bond.

The Court: Well, if he gets released on bond,

then the Immigration authorities take him again. So he could go to the custody of the marshal, and put up his bond, and walk out the door into the arms of these two gentlemen who seem to be around wherever the defendant is.

Mr. Lavine: That is what happened to him the time he got released before. And they have been very much present at all times.

The Court: I am a little inclined to think that the presidential order of arrest and the executive order under which it was made, as well as the statute authorizing the executive order, is, in effect, a modified form of martial [302] law, and that while the Civil courts may proceed to try and convict persons for violations of the federal laws, nevertheless that so long as the state of emergency, that is, declared unlimited emergency exists, as does exist at the present time, and so long as the presidential warrant is outstanding, it would take precedence by virtue of the modified martial law over any order of this court for the custody of the body of the defendant.

That is certainly not any final conclusion, but that will indicate to counsel what my inclined opinions are, if I may say. So that when the matter comes up for sentence, if you have anything to offer on that subject I would appreciate it.

Mr. Lavine: Well, it seems to me, your Honor, that I have this suggestion to make, and there is no reason why it can't be made now: Perhaps a suspended sentence would serve all the ends of the

Government; and he will be confined, and I think that——

The Court: No, I don't think that the facts in this case nor the crime warrant a suspended sentence. That is my present conclusion. Of my own motion I will put it over until Tuesday morning for sentence. [303]

\* \* \* \* \*

The Court: You have your motion for a new trial which I have read. It is not supported by any affidavits.

Mr. Lavine: Well, it is supported by an affidavit by me your Honor.

\* \* \* \* \*

Mr. Lavine: However, I intended at this time to put on the Bailiff or Marshal who had charge of the jury, for the purpose of having the exact testimony produced, as my knowledge, of course, was gained from information, and I believe it was correct.

The Court: You were present in my chambers, Mr. Lavine.

Mr. Lavine: I was present in your chambers.

The Court: When the communication came to me. Therefore, I do not think you are warranted in the implication, in filing this affidavit, that you are informed and believe that there was private communication. You know whatever private communication there was.

Mr. Lavine: Now let us get the exact facts, if your Honor pleases, if I have not stated them cor-



rectly. My first knowledge of that fact came from information from the Clerk who passed into your chambers, stating that the jury wished to get further instructions. Now, I had no communication with the jury, so that——

The Court: You were present. [304]

Mr. Lavine: I was present in your chambers when the Clerk passed through and stated that. And after the Clerk had conversation with you——

The Court: Well, let us put the Clerk on the witness stand, then, if you want him.

Mr. Lavine: Yes. I would like him, and also the Bailiff, because——

The Court: All right.

(The Clerk was duly sworn by the Court.)

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### J. M. HORN

called as a witness herein, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Lavine:

At Friday afternoon, after the jury retired in this case, I received a communication from the United States Marshal, a Deputy, regarding a request from the jury for further instructions or for reading of instructions. I, myself, did not talk to anyone on the jury.

(Testimony of J. M. Horn.)

(Questioning by the Court.)

I was in chambers, in the presence of Judge Hall. And Mr. Fuller was presnt, Mr. Neukom, and Mr. Lavine. Mr. Fuller said that the jury would like to have the instructions of the Court, and your reply was: "Well, what is the custom?" I said, "My understanding is that the custom is that the judges do not give the instructions to the jury, [305] but should the jury request further instructions, or instructions re-read, they usually ask the jury to come into the court room."

"I will give them, but I will not send up the instructions, written instructions, to the jury for their perusal." That was my statement—that if the jury wanted the instructions that you would read them in open court, but that you would not send up the written instructions. Mr. Lavine did not make any objection to that statement that I remember, nor did Mr. Neukom, of the United States Attorney's office. Mr. Lavine did not state that he desired that it be made a matter of record. He did not make a statement indicating an exception to the statement; which you had given to the Marshal.

(Questioning by Mr. Lavine.)

This conversation with the judge with reference to what word I should send to them was held in his chambers. It is not a fact that I went through the chambers and informed Mr. Neukom and you, who were present in the chambers, as to the proceeding

(Testimony of J. M. Horn.)

and then went into the adjoining room where the judge was at the time, not to my knowledge.

(Questioning by the Court.)

Your statements were made in the presence of Mr. Lavine and Mr. Neukom, and myself, and the Marshal? That is the statement which I have just repeated.

(Questioning by Mr. Lavine.) [306]

You made no statement to the judge with reference to the matter?

Mr. Lavine: Will your Honor stipulate that we did have a conversation in which I stated that the State practice is to send up the instructions to the jury, and that it was satisfactory with me if your Honor wished to send up the instructions; and then that there was a discussion between yourself and Mr. Neukom and myself in which Mr. Neukom stated that the jury might pick out some single instruction, or something of that sort, and he did not want it done?

The Court: That was stated after I had instructed the Marshal that if the jury desired me to read the whole of the instructions, I would read them, or if they desired any one instruction, to bring them back to the court room and I would read it to them.

Mr. Lavine: Where was that instruction, your Honor, so that our record may be clear?

The Court: That instruction was in the chambers, in your presence and in the presence of Mr. Neukom.

(Testimony of J. M. Horn.)

Mr. Neukom: I will so stipulate.

The Court: But before any communication that you made. I do not recall what you said. My recollection is that you said they did do it in State Court.

(Questioning of the Clerk by Mr. Lavine resumed.)

The Defendant was not present in the chambers at any time. The Court was not reconvened at any time after that [307] with reference to the instructions—not until the jury returned with their verdict. That was at approximately 4:30, I think. The records will reflect that. The request was made to me I think a very few minutes after they adjourned. That is, after they had been sent to the jury room for deliberation. I would have to refer to my records for just when they left the courtroom.

By the Witness:

I think that my records reflects that they left at 3:59. I am not positive. They were only out about 30 minutes all told.

(Questioning by the Court.)

I was present in your chambers when the Marshal came and said the jury had a verdict. Neither the defendant's counsel nor the United States Attorney nor the defendant were present when the Marshal informed you of that.

The Court: So that was a proceeding outside of the presence of the defendant.

Mr. Lavine: That is correct.

(Testimony of J. M. Horn.)

(Questioning by Mr. Lavine.)

After the judge talked to me with reference to the judge's statement that he would not send the instructions up to them. I merely informed the Bailiff. Well, the Bailiff was present at that time. So it was not a matter of informing him. He knew just what he would do. I suppose the Bailiff returned and told the jury. [308]

### Examination

By Mr. Neukom:

I did not talk to that jury from the time they were out until they came back. And when the jury came back and brought in their written verdict and it was in the hands of the Foreman, Mr. Lavine had not made one single statement in objection to the fact that the Court had not re-read or sent up the instructions to the jury.

The Court: The defendant was present at the time that the jury returned.

Mr. Neukom: That is correct.

Mr. Lavine: We will stipulate to that.

The Witness: It is correct.

Mr. Lavine: At the time they returned with their verdict.



## GLENN C. FULLER

called as a witness herein, being first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Lavine:

My name is Glen C. Fuller. My position in this court is Bailiff. I was in charge of the jury that was deliberating in the case of United States v. Di Marzo on Friday, September 18, 1942.

After the jury had been in the jury room deliberating possibly five or ten minutes there was a rap on the door. [309] I knocked, rapped back, as we usually do, and opened the door. Then the Foreman had a request. He asked me to see if I could bring the instructions from the judge to the jury room. I said to him, "I will try." Nothing else was said then. I closed the door and locked it. Then after that I came to the court room and informed the Clerk, Mr. Horn, of the request of the jury. Mr. Horn and I, together, went into the judge's chambers. I saw the judge at the time in the judge's chambers. Mr. Horn informed the judge of the request of the jury. He told the judge that the jury wanted the instructions. The judge asked the Clerk something concerning the custom. There was a little discussion between Mr. Horn and the judge in regard to the custom. When the judge asked concerning the custom, I think that Mr. Horn said something about—if I remember right—that not any—as a rule, they did not send them to the deliberating room. The judge said to Mr. Horn, "I will read part

(Testimony of Glenn C. Fuller.)

or all of the instructions if they desire, but not send them to the jury room." I went back to the jury room.

(Questions by the Court.)

During this conversation Mr. Lavine and Mr. Neukom were in the room; and within hearing of the conversation had. As a matter of fact, you stood on one side of the room and I stood on the other.

Q. By Mr. Lavine: Was the defendant present?

The Court: In chambers? [310]

Q. By Mr. Lavine: In chambers?

The Court: He was not.

The Witness: He was not. I didn't see him.

(Questioning by Mr. Lavine.)

Then after I received that word I went back to the jury room. I rapped on the door, as we usually do. They gave a rap from the inside. Then I opened the door and delivered the message as the judge had given it. I said, "The judge will read part or all of the instructions in open court, but not send the instruction to this room." The Foreman said to me "The instructions are not necessary." That is the remark he made to me.

(Questioning by the Court.)

Nothing else happened then. Nothing else on that subject. I closed the door and locked it. When I left the jury room, I left Mr. Brand at the jury room, with the door locked. He is another Bailiff; another Deputy United States Marshal. He was there when I returned.

(Testimony of Glenn C. Fuller.)

(Questioning by Mr. Lavine.)

I talked to the Foreman of the jury. His name I can't recall.

(Questioning by the Court.)

He was the same man that presented the verdict as the Foreman. The Foreman did all the talking.

(Questioning by Mr. Lavine.)

When he was talking the other jurors were all seated [311] around the table and he was at the end of the table.

His first conversation when he asked me to make the request, he was standing at the door, but when I returned, somebody else rapped, one of the other jurors rapped on the door, and when I rapped back and then opened the door the Foreman was sitting at the end of the table and I delivered the message to him—to the Foreman.

Mr. Lavine: At no time after that until the jury returned with the verdict, I think we have stipulated that the jurors were not brought into court.

Q. By Mr. Lavine: You did not bring the jurors into court at any time?

Mr. Neukom: It will be stipulated that they were not brought into court.

Mr. Lavine: All right; so stipulated.

Mr. Neukom: Wait a minute. I want the record to show, if you will stipulate: As a matter of physical condition, there is merely one door between

(Testimony of Glenn C. Fuller.)

here and the court chambers, and there is no intervening hall; and the defendant at all times during the conversations that took place in the judge's chambers that this gentleman has testified to was at all times right here in the court room.

Mr. Lavine: Well, I can't stipulate to that because I don't know whether he was in the court room at all times or not.

The Court: Well, you can ask him, can't you?

[312]

Mr. Lavine: Yes; I can ask him.

The Court: The defendant, whether he was here.

Mr. Lavine: (After consulting with defendant): He went out, he states, with Mr. Kettering, the Immigration Officer, and was outside a substantial portion——

The Defendant: About 10 minutes.

The Court: About 10 minutes of the time the jury was out?

Mr. Lavine: Yes; he was out, outside of the courtroom.

Mr. Neukom: He was in here in the building.

Mr. Lavine: I will stipulate that he was in the building.

The Court: In addition to what you have stated, there was no other communication from any member of the jury to you or to anyone else, as far as you know, from the time they left the court room until they returned with a verdict?

A. No other communication.

(Testimony of Glenn C. Fuller.)

Q. By Mr. Neukom: Did you discuss the case in any manner with the jury?

A. Not at all.

Q. By the Court: Or with the judge while the jury was out?      A. Not at all.

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### DAVID BRAND

called as a witness herein, being first duly sworn, was examined and testified as follows: [313]

#### Examination

By the Court:

I am a Deputy United States Marshal, and Bailiff of this court. I was acting as such Friday, September 18th. I heard the testimony of Mr. Fuller just now. When he came downstairs he left me at the jury room. No member of the jury communicated with me in any manner whatsoever while I was there. I remained there at the door at all times from the time that Mr. Fuller left until his return. I heard his conversation and I heard his replies. They were as he testified.

Q. By Mr. Neukom: Did you talk to the jury?

A. No; I did not.

\*            \*            \*            \*            \*            \*

Mr. Lavine: Now, may it please the Court, in this matter there is one common law which has been held repeatedly by the United States Supreme Court and by various Circuit Courts of Appeal, and that



is, that all proceedings, regardless of their nature, should be held in the presence of the defendant during the course of the trial from the time that the case begins until the jury actually comes in with its verdict. In the case of *Shields v. United States*, a decision by Chief Justice Taft in 1927, there was a request—— [314]

Mr. Neukom: Let us have the citation.

Mr. Lavine: 273 U. S. at page 583; 71 L. Ed. 787. There was a request in chambers, joined in by the District Attorney and counsel for the defendants in a criminal case, that the jury be held in deliberation until they should agree upon a verdict; and also there was a request for a further instruction and the jury retired and had received a written instruction from the Court; and Chief Justice Taft in that case states that all the proceedings should be held in the presence of a defendant. Here in that case, while the acts went much farther than we have in the case at bar, your Honor, still the Court pointed out there that in approval of an earlier case of the United States Supreme Court, *Fillippon v. Albion Vein Slate Co.*, 250 U. S. at page 76, which was a civil suit of damages in a personal injury action, that after the trial judge had completed his instructions to the jury and the jury had retired for deliberation, and while they were deliberating, they sent to the judge a written inquiry on the question of contributory negligence, to which the trial judge replied by sending a written instruction to the jury room, in the absence of the parties

and their counsel and without their consent, and without calling the jury into open court. A new trial was ordered. The Court said:

“Where a jury has retired to consider its verdict, and supplementary instructions are re-[315] quired, either because asked for by the jury or for other reasons, they ought to be given either in the presence of counsel or after notice and an opportunity to be present; and written instruction ought not to be sent to the jury without notice to counsel and an opportunity to object.”

That case going back to the case of——

The Court: Will you hand that book to me, Mr. Bailiff? That is Shields?

Mr. Lavine: Yes; Shields v. United States, your Honor.

(Court examining book.)

Mr. Lavine: Now, in the Fillippon v. Albion Vein Slate Co. case, the headnote which contains the summation of the case, the first headnote: “The Trial Court should not”——

Mr. Neukom: May it please your Honor, I would like to get these citations.

Mr. Lavine: Yes. I gave it to you before. 63 L. Ed. at 853.

The Court: That is the case referred to here.

Mr. Lavine: That is correct.

The Court: Fillippon v. Albion Vein Slate Co.

Mr. Lavine: “The Trial Court should not, in re-

sponse to an inquiry from the jury, send a written supplementary instruction to the jury room in the absence of the parties and their counsel, and without their consent, and without calling the jury in open court." [316]

Now, here we have a situation where the jury was not called into court after the request, the defendant was not present at the communication, and the proceedings were had in the absence of the defendant and not in open court.

In *Fina v. United States*, 46 Fed. (2d) at 643, it was stated that:

"Conduct of Trial Court in answering question propounded by jury after retirement, without notice to defendant or his counsel and in their absence, held error requiring reversal, so prejudice was not shown."

The Court: Mr. Lavine.

Mr. Lavine: Yes.

The Court: You do not need to argue the proposition to me that it is error it is error for a judge to instruct a jury in the absence of a defendant. And the cases that you have read all go to that.

Mr. Lavine: That is correct.

The Court: According to the first case you read the Court sent them a written instruction out of the presence of the defendant. Here this is merely a communication, which has been done a thousand times and done in every criminal case, as I indicated in my questions. The Marshal sends it to the judge in chambers, or wherever he may be. The communi-

cation comes from the jury to the judge that the jury has a verdict. Now, that is a communication from the jury to the judge. The judge sends the Marshal back to bring [317] them in. That is the communication from the judge to the jury.

Mr. Lavine: That is true, your Honor, but here the communication was not merely that. The communication was that they wanted the instructions read to them.

The Court: No; they did not want the instructions read.

Mr. Lavine: They wanted the instructions delivered to them.

The Court: No; there was no request that the instructions be read at all.

Mr. Lavine: There was a request that the instructions be delivered to them.

The Court: Yes; and my instruction was that I would read them in open court, which, of course, comprehended the presence of the defendant.

Mr. Lavine: However, when the jurors wanted those instructions, your Honor, under our practice in the State Court and under the Sections of State Court Proceedings—Section 1137 of the Penal Code and 27 Cal. App., in the case I cited on my motion for a new trial——

The Court: Yes; which holds it is a matter of discretion for the judge.

Mr. Lavine: No; not if the jury requests it. It is a matter of discretion with the judge unless the jury requests it, and I think that that is the language

of the case, [318] "Unless the jury requests it."

The Court: I do not read it the same as you do. It does not touch that. It just was that "It does not appear here that the jury asked for the instructions or for the privilege of taking them to the jury room." "The matter is one which it is contemplated shall be left to the sound discretion of the Court, whose action thereon will not be disturbed unless such discretion is shown to have been abused."

Mr. Lavine: Then, isn't there another sentence there?

The Court: No. It goes on: "It does not appear here that the jury asked for the instructions or for the privilege of taking them to the jury room." In other words, it does not indicate that you must send them if they ask for them.

Mr. Lavine: As I read one sentence in there, that was the implication of the case, your Honor, that if either side requested it, it was within the sound discretion of the Court, but that if the jury requested it——

The Court: This is quoting from the Cochran case:——

Mr. Lavine: That is correct, your Honor.

The Court: "It is not the absolute right of the prosecution or defense to have the papers or instructions sent with the jury, unless the jury demand it."

Mr. Lavine: That is right. [319]

The Court: That makes it a right of the person if the party demands it and the jury demands it.

Mr. Lavine: Well, in this case the jury demanded it and they were refused.



The Court: The testimony is not that the jury demanded it.

Mr. Lavine: They requested it.

The Court: They requested it, and when the Marshal went back, they said that they did not need them.

Mr. Lavine: After he told them that your Honor would not send them to them; that is correct.

Mr. Neukom: I do not think the State rule applies.

Mr. Lavine: What is that?

Mr. Neukom: I do not think the State rule applies.

Mr. Lavine: It does since the *Erie v. Tompkins*, I believe, if I understand the purport of that case. The State rule applies where there are no Federal decisions or holdings to the contrary, that the law of the State applies under the uniformity act.

Mr. Neukom: That is only diversity of citizenship in a civil case. I have that the rule that State law is inapplicable, as ruled in *Housel and Walser, Defending and Prosecuting Federal Criminal Cases*, under Section 519, citing a number of cases.

Mr. Lavine: I have read those, but I still think that Section 725 applies. I have made my point, your Honor. [320]

The Court: Very well. Let me see, now. On that point, your point is that it is not a matter of discretion with the judge?

Mr. Lavine: That is correct; it is not when the jury requests the instructions.

The Court: Yes.

Mr. Lavine: And first, that it is not a matter of discretion with the judge; and second, that even if it were a matter of discretion with the judge, that that discretion would have to be exercised by a proceeding in open court in the presence of the defendant; in other words, after the request was made to you.

The Court: That is, a request for all of the instructions to take to the jury room, we are talking about?

Mr. Lavine: That is correct, yes.

The Court: Very well.

Mr. Lavine: And then, that the jurors should have been called back into the court, the defendant should have been called back, and both sides be heard on the question of whether they should be sent or given to the jury to pick out. At least, the defendant should have been present at that stage of the proceedings with his counsel, and a proceeding held in open court in which all the proceedings were fully presented and heard on both sides. Then if your Honor had ruled, that would have been an exercise of discretion. But where your Honor has not done that, there is no exercise [321] of discretion but an action without a discretion on that matter.

Mr. Neukom: May I inquire, your Honor, of Mr. Lavine, if he requested the Court that his client be brought into chambers or that the Court be reconvened?

The Court: There is no testimony to that effect.

Mr. Neukom: You do not contend that that is so, do you Mr. Lavine?

Mr. Lavine: No.

\* \* \* \* \*

Mr. Lavine: The second ground, your Honor, of the motion for the new trial is an instruction that your Honor gave that the defendant could be guilty if he aided and abetted, advised and encouraged any act of prostitution or act of transporting and causing transportation in interstate commerce. Does your Honor recall?

The Court: You are referring specifically to the instructions quoting the law?

Mr. Lavine: Yes, your Honor.

\* \* \* \* \*

Mr. Lavine: The other point is one raised prior to [322] the time your Honor came into the case, and that is the question of the jurisdiction of this Court to proceed. I am not going to argue that at length on account of the position in which the defendant finds himself at the time of his arrest, at the time of this entire case, and at the time of the entire proceedings.

The Court: Well, I passed on that at the commencement of the trial.

Mr. Lavine: That is right.

The Court: That is to say, whether or not he was then entitled to go to trial or had been denied due process.

Mr. Lavine: That is right.

The Court: And my holding then was that he

had had a reasonable opportunity to seek counsel and prepare his case for trial; that he had not been denied his right of due process.

Mr. Lavine: Under the jurisdiction of a court procedure, if this defendant is a prisoner of war, your Honor held the other day that he was being held under martial law. Of course, we are now engaged in total war and if he is held by reason of being a prisoner of war, then his only right to proceed, or the only right of the court to proceed, would be to notify a neutral nation who had to be notified and be present in court during the trial of this defendant.

The Court: Who? Who present in court?

Mr. Lavine: A neutral nation, if the defendant is a [323] prisoner of war.

The Court: A representative of a neutral nation?

Mr. Lavine: Yes, your Honor, if the defendant is held to be a prisoner of war. Of course, that is something that we have argued heretofore, and under War Articles of The Hague Treaty that is one of the requirements. Now, that is my position generally, your Honor.

There are several other points and several other instructions. We have considered all those in due time and I am not going to take up—

The Court: State all your points. Have you stated them all on your motion for a new trial?

Mr. Lavine: On the point of the question of intent, your Honor, on the instructions I disagreed with your Honor's introduction or permission for

the Government to introduce in evidence the acts of misconduct, so called, of the defendant.

The Court: I recall, on the question of intent.

Mr. Lavine: On the question of intent.

The Court: I settled that, and I think my decision was correct.

Mr. Lavine: You asked me to state my points and I am presenting that to the Court.

The Court: Very well.

Mr. Lavine: I think that the defendant could not have a fair trial under the situation in which he found himself, [324] with the two Immigration Officers in the court all the time and he being a prisoner under the shadow of those Immigration Officers and being of Italian lineage. I don't think that that situation is one that lent itself to a fair and impartial trial on the part of this defendant.

\* \* \* \* \*

The Court: Let us have this correct now for the record. You are willing to stipulate that at no time has the defendant been handcuffed, manacled, or physically restrained or imprisoned or bound or handcuffed to anything during this trial?

Mr. Lavine: Not in the court room; no, your Honor.

The Court: Very well.

Mr. Lavine: However, he has been right with an Immigration Officer at all times and that——

The Court: That is to say—and let us have that correct as a matter of record—the Immigration Officer has not been seated at the counsel table?

Mr. Lavine: That is correct.



The Court: You have been seated alone?

Mr. Lavine: That is right.

The Court: And he has been seated at least from 10 to 15 feet away?

Mr. Lavine: That is correct, in the court room.  
[325]

The Court: Is it your contention that the Immigration Officer was within the hearing of yourself and your client during the course of this trial.

Mr. Lavine: I can't say that he was, your Honor.

Mr. Neukom: Let us put him on the stand on that, then, your Honor. Put the Immigration Officer on.

The Court: All right; come forward.

Mr. Lavine: We can stipulate that he has been in a uniform all the time?

Mr. Neukom: Yes. Yes; he has.

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## JOSEPH SLOANE KETTERING

called as a witness herein, being first duly sworn, was examined and testified as follows:

### Examination

The Court: Is it also stipulated that he has a uniform on and at all times has carried a gun?

Mr. Neukom: Also so stipulated.

Mr. Lavine: So stipulated.

By Mr. Neukom:

I am wearing the uniform that is designated by my superiors, as a Border Patrolman of the Immi-

(Testimony of Joseph Sloane Kettering.)

gration Service. It is true that during the trial I took Mr. Di Marzo down to Mr. Lavine's office on one day and allowed him to be there for as long as they wanted to talk to him. It is true that afterwards you told me that you did not want to know a single thing as to what took place down there. [326] I did not at any time communicate with you or any F. B. I. agent concerning anything that I had even heard of talked about to Mr. Di Marzo. I was present at some time at the Tuna Canyon Detention Station, where Mr. Di Marzo was located, when Mr. Lavine came out and interviewed him. I did not listen to any of the conversation. I did not hear it. As to whether it was in a room where they were given free access to talk over whatever they wanted to talk about—— On the first occasion I believe it was in the admission office in a small room. On the second occasion it was under the tree in the yard in the enclosure. On the first occasion I was not present at the discussion. I was merely in and out of the office. On the second occasion I was not present there and merely observed them under the tree, under the observation of the officer of the watch who was, I would say, about 20 or 25 feet from the tree where they were seated under. I couldn't say whether Mr. Lavine came out on more than those two occasions. I was given instructions by my superiors permitting Mr. Lavine to come at any reasonable time to interview Mr. Di Marzo. To the best of my knowledge those instructions were carried out.

(Testimony of Joseph Sloane Kettering.)

This La Tuna Camp is upon a highway and it is accessible from automobiles. It is approximately 15 miles from here.

(Questioning by the Court.)

I have been present in the court room during the course of this trial. I have observed the defendant seated at the [327] counsel table with his counsel. I have not overheard any of their conversations or consultations, or the client's instructions to his lawyer, or the lawyer's advice to his client in the court room.

#### Cross Examination

By Mr. Lavine:

At the time that you went out to the Tuna Canyon Station there were other officers there who were in charge, and they were the ones who were assigned to watch Mr. Di Marzo and any person interviewing him. This small room that I saw you talking in there, I would say it was a room 6 by 10 feet. There is a screen in the room. The persons talking are visible through that screen from the admission office. Whether you can hear conversations in the admission office from the room where the screen is located would depend on the audibility of the conversation, how loud it were spoken or how soft it were spoken. I could carry on a conversation there that could not be heard, and I could carry on conversation that could be heard.

At some of the times that I have been in the court room here I have also been accompanied at other

(Testimony of Joseph Sloane Kettering.)  
times with an Immigration Officer in a similar uniform to my own. On two occasions. One carried a gun and one did not.

When I was in your office on the occasion that I brought Mr. Di Marzo down, on that occasion I was in the office itself where Mr. Di Marzo was conferring with you. [328] I remained present at all times in the room.

Q. By Mr. Neukom: You were complying with your duties, were you not? A. Yes, sir.

Mr. Lavine: Well, there is no question about that, and he was doing it very efficiently, probably too efficiently, from our standpoint.

The Court: You have stated all the points upon which you rely?

Mr. Lavine: Yes; upon the motion for the new trial.

The Court: Yes.

Mr. Lavine: Referring to Article 60 of the Convention of The Hague, your Honor, at the opening of a judicial proceeding directed against——

The Court: Just a moment. May I have the file? You quoted that, did you not, previously?

Mr. Lavine: I don't believe that I did, your Honor.

Mr. Neukom: The Government did in their brief, your Honor.

Mr. Lavine: What is that?

Mr. Neukom: The Government has in their brief quoted portions from the Article.

(Testimony of Joseph Sloane Kettering.)

The Court: All right; proceed.

Mr. Lavine: "At the opening of a judicial proceeding directed against a prisoner of war the detaining power shall advise the representative of the protecting [329] power thereof as soon as possible and always before the date set for the opening of the trial. This advice shall contain the following information:"

And then it sets up various information that should be set up, including a specification of the count or counts of the indictment, giving the legal provisions applicable.

"If it is not possible to mention in that advice the Court which will pass upon the matter, or date of opening the trial and the place where it will take place, this information must be furnished to the representative of the protecting power later and as soon as possible, and in all events, at least three weeks before the opening of the trial."

My client asked me to call that provision to your Honor's attention in connection with this matter.

I believe I have stated all the grounds that I wish to urge at this time, your Honor.

The Court: Well, wait a minute. That is in support of your contention that he is a prisoner of war, or in support of your contention that he is an alien, merely an alien?

Mr. Lavine: That is in support of my position that he is a prisoner of war, your Honor; that he could not be held except by a Presidential order;



that as far as the charge on which he is being detained at the Tuna Canyon Station is concerned, that that is not by reason of any indictment or any offense, but only by reason of his being an alien, as a [330] prisoner of war, that is, he was taken into custody.

The Court: All right. Now, the Article that you just read, is it your contention that relates to prisoners of war?

Mr. Lavine: Yes, your Honor; and that this man——

The Court: What is that? That is a convention of what date?

Mr. Lavine: Signed at Geneva July 27, 1929.

The Court: Read it again, the section.

Mr. Lavine: Ratified in 1932.

“At the opening of a judicial proceeding directed against a prisoner of war the detaining power shall advise the representative of the protecting power thereof as soon as possible and always before the date set for the opening of the trial.”

The Court: Who is the detaining power?

Mr. Lavine: The detaining power is the United States.

The Court: Who is the protecting power?

Mr. Lavine: The Swiss Consul would be the protecting power under the——

The Court: Is that designated there?

Mr. Lavine: It is designated somewhere in the Treaty itself, your Honor, in another portion of it. I am not sure what section designates that, your

Honor. I believe there is a section in here designating that, if there is no repre- [331] sentative of the foreign government, the Swiss government then acts as the protecting power for those countries which have no representative in the United States.

The Court: It is necessary, first, to determine that he is a prisoner of war.

Mr. Lavine: That is correct, your Honor.

The Court: In order for that to become effective. How do you get around the authorities cited by the Government in their brief that such interned alien enemies are not, and have not been since July, 1798, prisoners of war?

Mr. Lavine: I cited the determination of the Army in this war in one of their bulletins that interned aliens are regarded as prisoners of war.

The Court: Well, let me see if I can find that.

Mr. Lavine: Army Bulletin No. 11, I believe it is, for 1941.

Mr. Neukom: I have that bulletin upstairs. If I had had any idea you were going to argue this again I would have brought it down. But that, your Honor, is purely an inter-office bulletin from the War Department to itself.

The Court: From the War Department to itself?

Mr. Neukom: That is to say, it is an office bulletin.

The Court: Well, if it is an official conclusion——

Mr. Neukom: It is not an act of law. I would prefer having the bulletin and discussing it. I think the matter is entirely treated by the Hague Treaty. To be a prisoner [332] of war you must be a captured person.

The Court: I am inclined to think that is correct. All right.

Mr. Lavine: Your Honor, if the Administrative Branch of our Government, which deals with war, has declared that persons so interned are prisoners of war isn't it determinative of the matter?

The Court: You were just arguing that the treaties, international treaties, were the supreme law of the land.

Mr. Lavine: That's correct.

The Court: And prevailed over the declaration of any department of the Government.

Mr. Lavine: That's correct.

The Court: Now, upon which do you wish to rely?

Mr. Lavine: On both, your Honor.

The Court: On both.

Mr. Lavine: The Treaty itself does not in any way differentiate that. The Treaty says, "Prisoners of war." We have no definition in the Treaty—

The Court: Of what a prisoner of war is.

Mr. Lavine: Excludes it. The definition given by the Army says that anyone that is taken into custody certainly would be a prisoner of war; and anyone who under certain conditions is doing certain things that are deemed inimicable to the Government are certainly prisoners of war.

The Court: Does that say that there? [333]

Mr. Lavine: No, your Honor, I haven't that here.

The Court: Well, in a strict sense isn't a prisoner of war a person who has been captured in the act of making war upon the United States?

Mr. Lavine: I didn't get your Honor's last statement.

The Court: In a strict sense, or in a common sense, isn't a prisoner of war a person who has been captured in the act of making war upon the United States?

Mr. Lavine: No, your Honor. That would be a very limited definition of it. A prisoner of war would be any person who is being held by the Government for the purpose and because of the fact that they might or might not be a possible part and parcel of the Army of the enemy. The defendant is being held by the Army.

The Court: Part and parcel of the Army of the enemy making war, if the nations are at war.

\* \* \* \* \*

The Court: I want to give your point a little study on that one and also on your first point.

\* \* \* \* \*

Mr. Lavine: And I have made another motion in writing. [334]

The Court: Where is that motion?

Mr. Lavine: Motion in arrest of judgment.

The Court: Simply make that motion on all the other grounds that you urged in connection with the new trial.

Mr. Lavine: Very well, your Honor. [335]

\* \* \* \* \*

The Clerk: United States of America v. Joseph Di Marzo, for decision on motions of the defendant for a new trial and in an arrest of judgment, and for sentence.

Mr. Lavine: Before your Honor makes his ruling, I wonder if I could call Mr. Kettering back for a few questions to clarify a few things I omitted asking him when he was on the stand?

\* \* \* \* \*

Mr. Lavine: In support of the point that the Court is without jurisdiction, on account of The Hague Treaty, and on account of the fact that the defendant was confined in a detention camp. And I just wanted him to describe a little more fully what Mr. Neukom had asked him about, and I didn't know some of the facts regarding it at the time.

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## JOSEPH SLOANE KETTERING

recalled as a witness herein, being first previously duly sworn, was examined and testified as follows:

\* \* \* \* \*

[336]

Mr. Lavine: Also, I would like to introduce two pictures of Mr. Kettering as he appeared here in court. I have shown them to Mr. Neukom.

Mr. Neukom: I don't feel that they have any place in the record, but I have no serious opposition to them.

The Court: Hand them to me, Mr. Clerk.

Mr. Lavine: They are the appearance of the officer who had charge——

The Court: These haven't any place in the record.

Mr. Lavine: I offer them for whatever purpose there is, to show the fact that Mr. Kettering was in



(Testimony of Joseph Sloane Kettering)

uniform, with the defendant, and the appearance he had at the time he was at all times in the court room. The one of Mr. Kettering is all I am interested in, your Honor.

The Court: The picture, as he is standing here this time, will give a wrong impression.

Mr. Lavine: I want the appearance of Mr. Kettering as he appeared at all times in the court room. We can cut off the other picture.

The Court: He didn't have his hat on in the court room, I know that.

Mr. Lavine: Except for the hat, your Honor, I think that is an exact representation of Mr. Kettering as he was dressed.

Mr. Neukom: That is the custom down in Georgia, for the Bailiffs to wear their hats, but not here. I don't think [337] they have any materiality

The Court: I don't think they have any materiality at all.

Mr. Lavine: It would simply show, your Honor, his appearance in court as was described, and as the jury saw him, at all times, with the exception for the fact that he has a hat on in that one picture there.

The Court: Well, it is wholly immaterial, it is entirely misleading. If you had a picture here of the size of the court room and Mr. Kettering sitting back there about 25 feet away from the defendant, it would be more appropriate.

I will refuse to admit them.

Mr. Lavine: Exception noted.

(Testimony of Joseph Sloane Kettering)

Direct Examination

By Mr. Lavine:

At different times as I am now dressed, and at the time that the case was actually in progress I had occasion to take the defendant into the lavatory in this building. During those occasions we ran into persons who were jurors, who were sitting in the case that I was called in. On one occasion there was a juror in there, that I recognized as a juror. I was dressed as I am now, with my uniform and with the Sam Browne belt, and with shells in my belt, and my pistol on my side.

The Court: Was anything said to the defendant by you, or by the juror, while you were in the lavatory? [338]

The Witness: I think I said, "Good morning, sir." and he said, "Good morning."

The Court: To the juror?

The Witness: Yes.

The Court: Nothing else?

The Witness: Nothing, to my knowledge.

The Court: Nothing in the hearing or presence of the juror?

The Witness: No, sir.

Mr. Neukom: That was not after the jury had retired to deliberate?

The Witness: No, sir.

By Mr. Lavine: That was while the case was in progress?

(Testimony of Joseph Sloane Kettering)

By the Witness:

Yes sir. The Tuna Canyon Station has a wire fence around it, and has barb wire on top of the wire fence. It is locked, and all persons who are confined therein are locked in. The place is guarded. We have police dogs guarding the place, as well as men.

As to whether this room where you conferred with Mr. DiMarzo is electrically wired—there is an amplifying system in four positions in the camp that are for the use of the personnel, to facilitate having to run back and forth.

As to whether that amplification carries any sound or voices in that room to other places in the camp—it is controlled from the office, and if the amplifying system is [339] open there are five spots from the camp that can call the office, and any conversation in that room at that time would be heard in the office. By turning on the amplification system any normal conversation in that room can be heard in the main office. There are Italians, Germans and Japanese in that camp.

Q. And when they are taken from there for internment, who takes them?

Mr. Neukom: I object to that as being immaterial to the issues in this case.

The Court: Sustained.

Q. By Mr. Lavine: Does the Army take them?

Mr. Neukom: I object to that.

The Court: Sustained.

Mr. Lavine: Exception noted to the questions.

(Testimony of Joseph Sloane Kettering)

I offer to prove, at this time, that the Army officers would take them from the internment—from this station to an internment place, and that they are at all times from that time on controlled by the United States Army.

I make that offer of proof.

### Cross Examination

By Mr. Neukom:

The purpose of these amplifications is if at any time anybody in the main office wants to convey a message to this large camp, they have an opportunity to convey it over the loudspeaker system. And if anyone happens to be at any one [340] of the five points in the camp, and wants to convey a message to the office, they may be able to convey one. That is to say, anyone in my capacity, or anyone else—so that you may keep at hand, and be able to quickly communicate, if there is any trouble brewing in the camp.

Mr. Di Marzo is captain of the camp, and I will say is an aide and advisor to some of the fellows that can't speak good English, and so forth; he helps them out. They live in barracks. He had free access to all parts of the camp during the day.

Q. In fact, you have seen ladies come there and visit with him, have you not?

Mr. Lavine: I object to it as irrelevant and incompetent.

The Court: Overruled.

Q. By Mr. Neukom: You have seen ladies come there and visit with him?                   A. Yes, sir.

(Testimony of Joseph Sloane Kettering)

Mr. Lavine: Exception.

Q. By Mr. Neukom: Constantly, that is from day to day?

Mr. Lavine: Same objection.

The Court: Overruled.

Mr. Lavine: Exception.

A. Not every day, but on various occasions.

By the Witness:

They were permitted to come and talk to him. [341]

With regard to the amplifier—that was not in the nature of a Dictaphone. To my knowledge there are no Dictaphones in any of the rooms there that counsel was permitted to talk to Mr. Di Marzo while he was preparing his case. The particular room in which counsel was allowed to interrogate Mr. Di Marzo, or confer with him was a room about 6 by 8—possibly a third as big as the jury box. A very small room. He was also privileged to speak to him out under one of the trees in the yard, upon occasion. There was nothing to have prevented him to have gone out there and spoken that I know of. As to whether they picked the room where they talked just because this was more convenient to talk in—as to that I couldn't say whether they picked it of their wishes, or whether they were told to go in there. Mr. Di Marzo was not manacled when he was brought in to speak to Mr. Lavine. He was permitted to talk, but I don't know whether he was given pencil and paper. I have seen him conferring with Mr. Lavine on one or two occasions. I really couldn't say for how long. I have



(Testimony of Joseph Sloane Kettering)

not observed anyone out at the camp interrupt their conversations and tell Mr. Lavine that he must leave now. Mr. Lavine was privileged to remain there so far as I observed, as long as he thought it was necessary, upon each occasion when he went out to the place.

Redirect Examination

By Mr. Lavine: [342]

This loud speaker system is completely amplified to various points so that it is, in effect, a Dictaphone. That is to say, all the voices register in the main office, in normal tone of conversation.

(Questioning by the Court.)

I was not in the room with Di Marzo when he was consulting with Mr. Lavine. I was never in the room at any time. I never have been present at all times during any of Mr. Lavine's and Mr. Di Marzo's—I have been in and out.

That room sets off a little hallway, which is the admission to the admission room, where the administrative functions of the camp are handled, and it was some of my duties out there—I am in and out many times a day, and I have been in and out during two occasions when Mr. Lavine and Mr. Di Marzo were present. Upon those occasions I did not hear anything that was said either by Mr. Di Marzo to Mr. Lavine, or by Mr. Lavine to Mr. Di Marzo, that I recall. I don't know how long Mr. Di Marzo has been a captain in the camp. I have been there since the

(Testimony of Joseph Sloane Kettering)

27th of June, and he was a captain when I came there. He was a captain in the camp at the time that Mr. Lavine consulted with him; that is, when he saw him.

The loudspeaker system is controlled from the guard office, and if the system were open, he could come up and say anything that would come to his mind; if it were closed, the only way that he could contact the guard office would be [343] to get up into the guard post and push the button, which notifies the guard that someone wants to communicate with him, and then he turns on the speaker system.

As to whether as a captain out there it is included among the captain's functions to communicate with the central office over a communicating system—sometimes he is called, or someone else is called, and he hollers back that they are doing, or something, and we can hear that in the office. I have heard Mr. Di Marzo holler back over the loudspeaker system.

(Questioning by Mr. Neukom.)

The communication system in the room isn't hidden.

(Questioning by the Court.)

It is a box about six inches square and about two inches deep. It looks just like a small radio speaker.

#### Recross Examination

By Mr. Neukom:

It is on the wall. It sets on top of a filing case in the administration office. It was readily observable. I think it was in the month of August of this year.

(Testimony of Joseph Sloane Kettering)

I did not ever hear Mr. Lavine, or Mr. Di Marzo make any complaint, because of the existence of that box there, either before an interview or after an interview had with Mr. Di Marzo to my knowledge.

I have not communicated anything that Mr. Di Marzo has said to me either in the presence of Mr. Lavine, or in his [344] absence to you or to any agent of the F. B. I., with regard to this case.

I have been instructed by you and by Mr. Tyler that you did not care to know anything about what might take place out in the camp, so far as information was concerned.

#### Redirect Examination

By Mr. Lavine:

There is another officer who sits there in observation and at the listening post of this loud speaker. He sits approximately 40 feet, 50 feet from this room, where you visited Mr. Di Marzo. He sits in the control of the loud speaker. He controls it. He can turn it on and off whenever he wishes. I have not been present at all times when he has been there, but I have just walked in and out of the different places.

The Court: What do you think you have established by this testimony?

Mr. Lavine: I simply have completed the record, your Honor, in connection with the fact that where a person is in the position of this defendant he is not in the same category as one who is not confined in a camp of that sort. While it is true that we were able to confer, whether we conferred privately or not is

(Testimony of Joseph Sloane Kettering)

not one of those things that we could be certain of. And he didn't have the same freedom of movement that other persons not similarly situated could have. In other words, if he was not under this internment, [345] your Honor, he was entitled to be released on bail. The Constitution of the United States guarantees that. He posted his bail. This defendant had his bail up, and he was ready to go out on bail, which gave him, and would have given him, the freedom of opportunity of finding witnesses, that he could not tell me about, or that I couldn't possibly have known or located, through that news that might have been available to him.

The Court: I am speaking now of the testimony this morning.

Mr. Lavine: I say by reason of his confinement in the position he was in he did not have the same effective right of consultation with counsel.

The Court: No. I am speaking now—is it your position that because of the mechanical facilities which have been described this morning you claim some particular prejudice other than the general cumulation to the prejudice which you claim your client has had?

Mr. Lavine: Only that he could not effectively prepare for trial as one otherwise situated. That is the general prejudice which I have asserted heretofore, your Honor. And it is along the same line that I have asserted heretofore. That was the purpose of bringing those additional facts out.

The Court: I think it is a matter of showing an

actual prejudice, a prejudice in fact; it isn't a situation where suspicion might arise that there could be some prejudice. [346]

Up to now there has been no showing of any actual prejudice against this defendant, of any actual inability to consult with his counsel, of any actual lack of privacy. There has been no showing here that the defendant did not know of the existence of this. There is, certainly, an inference, from the officer's testimony, that he should have known, and could have known, and did know, in fact, of the existence of this, and yet he proceeded to consult—under the statements of counsel, concerning which a stipulation was had, that he would testify, if he were put on the witness stand—eight times with this defendant here.

Mr. Neukom: At the camp.

The Court: Yes, at the camp.

Whatever prejudice occurred to this defendant in that connection, it seems to me it was no more than the psychological prejudice that would occur against anybody who has been arrested and is committed to any institution.

I believe that the test is whether or not there is any showing of actual prejudice. There isn't any.

Mr. Lavine: Exception.

The Court: Have you anything further to offer in connection with your motions for a new trial?

Mr. Lavine: Nothing further.



The Court: On the two matters that I indicated I would give some consideration to, the two points, when you argued the matter before, those two points were— [347]

1. Whether or not there was a private communication with the jury in the act of the deputy marshal conveying a message from the jury to the Judge in chambers, and the Judge's return back, on the requesting of instructions and the Judge's denial of this. And

2. Whether or not by virtue of his confinement in custody of the immigration authorities during the process of preparing for trial, that is his actual custody by the immigration authorities during the trial, it has made him a prisoner of war, and entitled him to a notification by the Government to the so-called protecting power or third power prior to the time of the trial, as provided in the Hague Convention as signed at Geneva on July 27, 1929. And whether or not he has been denied due process of law, actually, by virtue of his commitment or as a matter of law.

\* \* \* \* \*

I will have to hold against the defendant on that first ground.

Mr. Lavine: Exception noted.

The Court: Coming to the last ground, the third one, whether or not there was a denial of due process; that is, as a matter of law, or as a matter of fact.

As I indicated a few moments ago, there has been

no showing here; in fact, no attempted showing, of any actual [348] prejudice, or inability on the part of the defendant to properly prepare his case, or defendant's counsel. Defendant relies, apparently, solely, as a matter of law, upon his confinement as denying him due process.

I think there must be a showing of actual prejudice, and there being none, I will have to hold against the defendant on that, the third count.

Mr. Lavine: Exception to that, too, your Honor.

\* \* \* \* \*

Going now to the other point, which I have designated Second, your contention that he is actually a prisoner of war, and under the requirement of Article 60, Chapter 3, Section 4 of the Convention between the United States of America and other Powers, signed at Geneva July 27, 1929, by the terms of which it is required: "At the opening of a judicial proceeding directed against a prisoner of war, the detaining Power shall advise the representative of the protecting Power thereof as soon as possible, and always before the date set for the opening of the trial," and other matters. It seems to me that that question is determined solely by whether or not this defendant is a prisoner of war, under the terms of this treaty.

\* \* \* \* \*

[349]

Taking all of those things, and reading them together, it seems quite evident to me that this treaty does not and was not intended to apply to persons

in the position of the defendant, and, therefore, I will hold against you on that point.

Mr. Lavine: Exception noted.

\* \* \* \* \*

The Court: The motion for a new trial is denied.

Mr. Lavine: Exception.

The Court: Your motion in an arrest of judgment, have you anything further to offer in connection with that?

Mr. Lavine: The same grounds as offered for the motion for a new trial, and the lack of the jurisdiction of the court.

The Court: That is denied.

Have you anything else to offer before the Court pronounces sentence?

\* \* \* \* \*

The Government has no recommendation either for or against whatever should be done in connection with this defendant. [350]

\* \* \* \* \*

The Court: Mr. Joseph Di Marzo, do you know of any legal reason why you should not be sentenced?

The Defendant: No.

Mr. Lavine: Other than the reasons which have been set forth in our motions.

The Court: Which have been settled and been acted upon by this Court?

Mr. Lavine: Yes; and exceptions duly noted to all of them.

The Court: Very well.

\* \* \* \* \*

It will be the judgment and sentence of this Court that you complete the time in a penitentiary of the United States, to be chosen by the Attorney General, for the term of three years, and in addition to that, that you be fined the sum of \$1,000.

Mr. Lavine: Exception noted. [351]

Defendant requested the following instructions which were refused and exceptions duly taken:

#### DEFENDANT'S INSTRUCTION No. A

You are instructed that the testimony of a witness who admits that she has told falsehoods *would* be subjected to careful scrutiny and considered with great caution, and you may reject it.

Speiller v. United States, 31 Fed. (2d) 682

#### DEFENDANT'S INSTRUCTION No. 1

You are instructed that the defendant is charged in the indictment with violation of that portion of United States Codes Annotated reading as follows:

“Any person who shall knowingly transport or cause to be transported in interstate commerce any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, shall be deemed guilty of a felony.”

It is your duty to find whether the defendant in this action knowingly transported or caused Helen Merle Beverlin to be transported in interstate com-

merce for the purpose of prostitution or debauchery or for any other immoral purpose, from Los Angeles to Hawaii. It is incumbent upon the Government to prove that charge and each element thereof beyond a reasonable doubt. [352]

#### DEFENDANT'S INSTRUCTION No. 4

You are instructed that when a witness testifies her character for truth, honesty and integrity is immediately placed in issue in the case, and if her character is bad you have a right to disregard the whole of her testimony. The weight to be given to the testimony of any witness is for you to determine.

#### DEFENDANT'S INSTRUCTION No. 6

You are instructed that one of the material elements of the offense to be proved by the Government is the specific intent on the part of the defendant to commit the act charged. The law does not presume such specific intent or purpose, but it is a fact to be proved by the Government, the same as any other fact in the case, and such intent cannot be presumed but must be established beyond a reasonable doubt.

If the Government fails to prove such specific intent beyond a reasonable doubt, or if such lack of intent appears from the nature of the evidence, you must acquit the defendant. The acts and circumstances surrounding the particular events of January 24, 1941, may tend to establish such in-



tent or lack of intent, as, for example: Did the defendant buy the ticket with which Helen Merle Beverlin departed? If he did not, then that fact would be evidence tending to establish the defendant's innocence. Did the defendant take Helen Merle Beverlin or accompany her to the boat? If he did, then that fact might be evidence [353] tending to establish intent to cause her to leave the United States. If he did not, then that fact would tend to show he was not causing her to leave the United States.

And so you may take into consideration each and all of the circumstances of the case in determining whether the defendant transported or caused Helen Merle Beverlin to be transported for the purposes condemned by the statute. If you have a reasonable doubt as to whether the Government has established such intent and purposes or knowledge on his part, you must acquit the defendant.

#### DEFENDANT'S INSTRUCTION No. 7

You are instructed that you have a right to take into consideration the action of the Government in acquitting and virtually granting immunity to Helen Merle Beverlin as bearing upon her credibility, her motive for false accusations, as well as bias and prejudice in the case. You also have the duty to take into consideration any other motive of prejudice or bias that may motivate her testimony against the defendant in this case.

People v. Pantages, 212 Cal. 237 [354]

## DEFENDANT'S INSTRUCTION No. 8

You are instructed that where all of the substantial evidence is as consistent with innocence as with guilt a conviction cannot be sustained. A defendant in a criminal action is presumed to be innocent, and that presumption clothes him throughout the trial of the case, and unless it is overcome by substantial evidence that satisfies your minds beyond a reasonable doubt, you must acquit the defendant.

Turinetti v. United States, 2 Fed. (2d) 15  
Grantello v. United States, 3 Fed. (2d)  
117

Edwards v. United States, 7 Fed. (2d) 357  
Bishop v. United States, 16 Fed. (2d) 410  
Dickerson v. United States, 18 Fed. (2d)  
887

Van Gorder v. United States, 21 Fed. (2d)  
939

Salinger v. United States, 23 Fed. (2d) 48  
Gerson v. United States, 25 Fed. (2d) 49  
Philyaw v. United States, 29 Fed. (2d) 225  
Gold v. United States, 36 Fed. (2d) 32, 33

## DEFENDANT'S INSTRUCTION No. 9

You are instructed that where the evidence in a criminal case is circumstantial it must be not only consistent with the hypothesis of guilt, but inconsistent with any other rational hypothesis. The defendant is presumed to be innocent until the proof satisfies the jury beyond a reasonable [355]

doubt of his guilt. Where the evidence is circumstantial, before the circumstances are sufficient to satisfy the minds of the jurors beyond a reasonable doubt, where every circumstance relied on as incriminating is equally compatible with innocence, there is a failure of proof necessary to sustain a conviction, and in that event it would be your duty to find the defendant not guilty.

People v. Lamson, 1 Cal. (2d) 648, 662

#### DEFENDANT'S INSTRUCTION No. 10

You are instructed that a woman may be an accomplice to her own transportation where she actively participates in bringing about the same. This is a fact for you to determine, and if you determine that she is an accomplice you may view her testimony with caution and distrust and disregard the whole of her testimony if you so desire.

United States v. Holte, 236 U. S. 140, 59  
L.Ed. 504

#### DEFENDANT'S INSTRUCTION No. 11

You are instructed that before the defendant can be convicted it is incumbent upon the Government to establish guilty knowledge on the part of the defendant. [356]

#### DEFENDANT'S INSTRUCTION No. 13

If you find that Helen Merle Beverlin would have taken the trip in question in any event and regardless of whether she engaged in prostitution, if she did so engage in Hawaii, this does not bring

the case within the meaning and intent of the statute; and if you find that Helen Merle Beverlin intended to take the trip herself in any event, you must acquit the defendant.

Fisher v. United States, 266 Fed. 667

#### DEFENDANT'S INSTRUCTION No. 14

You are instructed that where a person is wilfully false as to a material matter you may disregard the whole of her testimony, and if you find that Helen Merle Beverlin wilfully falsified in any material matter and you disregarded the whole of her testimony, you must acquit the defendant Joseph Di Marzo.

#### DEFENDANT'S INSTRUCTION No. 15

You are instructed that in determining whether Helen Merle Beverlin was alone responsible for her transportation to the Hawaiian Islands you must consider whether she herself bought the ticket, she herself planned the trip, she herself was active in desiring to go and in arranging her [357] own place of abode and mode of living, and if you find from the evidence that she did these things herself you may draw from these facts inferences favorable to the defendant, and if they in themselves, or in conjunction with other evidence leave your minds in a state of reasonable doubt as to his guilt, you must acquit him.

United States v. Grace, 73 Fed. (2d) 294

Gebardi v. United States, 77 L.Ed. 206

## DEFENDANT'S INSTRUCTION No. 16

You are instructed that even if you find from the evidence that Helen Merle Beverlin engaged in prostitution in Hawaii, it would be no proof that the defendant knowingly transported her or caused her to be transported for that purpose. It is incumbent upon the Government to prove by positive evidence that at the time Helen Merle Beverlin left Los Angeles the defendant knowingly transported or caused her to be transported for that purpose, and evidence of any acts of immorality by Helen Merle Beverlin in Hawaii must be directly shown to have been caused by the defendant, or it must not be considered by you.

United States v. Grace, 73 Fed. (2d) 294  
Gebardi v. United States, 77 L.Ed. 206

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## DEFENDANT'S INSTRUCTION No. 17

You are instructed that before you can convict Joseph Di Marzo it is incumbent upon the Government to prove that he knowingly transported or caused Helen Merle Beverlin to be transported for the specific purpose of prostitution or debauchery, or for any other immoral purpose, and in this respect I charge you that even if you find from the evidence that Joseph Di Marzo gave Helen Merle Beverlin some money before she left this would be insufficient to establish the charge here. The gravamen of the charge is the transporting or causing to be transported for the purpose of prostitu-



tion, and unless it is shown that Helen Merle Beverlin was transported or caused to be transported for the specific purpose contained in the statute, the defendant would be not guilty.

United States v. Grace, 73 Fed. (2d) 294

Gebardi v. United States, 77 L.Ed. 206

#### DEFENDANT'S INSTRUCTION No. 18

You are instructed that even though Helen Merle Beverlin went to the Hawaiian Islands and engaged in prostitution, if she did so engage, you must still acquit the defendant if the evidence leaves in your minds a reasonable doubt as to whether the defendant knew that she was going to the Hawaiian Islands for that purpose and with that intent.

Fisher v. United States, 266 Fed. 667

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#### DEFENDANT'S INSTRUCTION No. 21

If the Government has failed to prove that the defendant knowingly transported or caused Helen Merle Beverlin to be transported in interstate commerce for the specific purpose of prostitution or debauchery, or for any other immoral purpose, you must acquit him.

#### DEFENDANT'S INSTRUCTION No. 22

You are instructed that the offense charged in the indictment is knowingly transporting or causing one Helen Merle Beverlin to be transported from Los Angeles, California, to the Hawaiian Islands for the purpose of prostitution, or other im-

moral purposes. It is incumbent for the Government to prove beyond a reasonable doubt the following essential elements to the charge: (1) That Joseph De Marzo knowingly transported, or (2) knowingly caused Helen Merle Beverlin to be transported (3) for the purpose of prostitution or debauchery, or (4) for any other immoral purpose.

#### DEFENDANT'S INSTRUCTION No. 23

You are instructed that you have a right and a duty to take into consideration the motives which actuated a witness in testifying, and if you find from the evidence that Helen Merle Beverlin had quarreled with the defendant and [360] that she had gone to the Hawaiian Islands against his wishes, and that after returning she had fought with him, you may take these facts into consideration in determining the weight to be given to the testimony of Helen Merle Beverlin, and if, in your opinion it is not entitled to any weight, you may disregard it entirely, and in that event it would be your duty to return a verdict of not guilty in this case.

#### DEFENDANT'S INSTRUCTION No. 24

You are instructed that the defendant is presumed to be innocent. This presumption clothes the defendant throughout the entire trial of the case, and unless or until that presumption of innocence is overcome by substantial evidence, it is your duty to acquit the defendant.

## DEFENDANT'S INSTRUCTION No. 26

You are instructed that where a person has been acquitted of a charge, he may not thereafter be retried on the same charge, for he has been placed once in jeopardy. Jeopardy may occur in many ways. If two persons are jointly charged in a conspiracy and one of them is acquitted, the effect of that acquittal is to acquit the other person. A [361] person who is acquitted of a conspiracy to commit an offense cannot be convicted of the offense itself where, in order to be guilty of the offense, it would be necessary for him to be guilty of the conspiracy to commit the offense.

If you find, therefore, that Helen Merle Beverlin was acquitted of the charge of conspiracy to violate the Mann Act in the identical transaction in which Joseph Di Marzo is charged you must find that Joseph Di Marzo was also acquitted of the charge of conspiracy, and if you find that he was acquitted of the charge of conspiracy you are instructed that under the particular facts of this case such an acquittal would constitute an acquittal of the charge of violating the Mann Act itself.

Williams v. United States, 282 Fed. 481

United States v. Holts, 236 U. S. 140, 59  
L.Ed. 504

Speiller v. United States, 31 Fed. (2d) 682

## DEFENDANT'S INSTRUCTION No. 31

You are instructed that in order for a conspiracy to exist it is necessary that two persons engage in such a conspiracy, and if you find from the evi-

dence that one of the two persons was acquitted of the charge of conspiracy, this would constitute an acquittal of the other person, if there was no more than two persons named and involved. If you find that Helen Merle Beverlin was acquitted of the charge [362] of conspiracy to violate the Mann Act in the identical transaction in which Joseph Di Marzo is charged you must find that Joseph Di Marzo was acquitted. It will then be your duty to determine whether the acquittal of Joseph Di Marzo on the conspiracy charge constitutes an acquittal on the charge here before you.

In this respect I charge you that a woman who is transported, and who actively engages in securing her transportation, would be a conspirator with someone else who transported her or caused her transportation, and if you find that such a conspiracy existed it will be your duty to acquit Joseph Di Marzo, since one cannot be guilty of committing a crime where he is, in effect, acquitted of the conspiracy to commit it.

Williams v. United States, 282 Fed. 481

United States v. Holte, 236 U.S. 140, 59  
L.Ed. 504

#### DEFENDANT'S INSTRUCTION No. 33

You are instructed that a party is bound by the testimony produced by or in his behalf, and in this respect the Government is bound by the testimony given by Helen Merle Beverlin that she went to

Hawaii of her own accord and because she herself wished to go.

United States v. Corlin, 44 Fed. Supp. 940

Dravo v. Fabel, 132 U. S. 487 [363]

DEFENDANT'S INSTRUCTION No. 34

You are instructed that where the evidence is reasonably susceptible of two interpretations, one leading toward innocence and the other leading toward guilt, you must adopt that one leading toward innocence and reject the one leading toward guilt.

DEFENDANT'S INSTRUCTION No. 35

You are instructed that where evidence is offered that the law has been unequally applied by law enforcement officers, a defendant is denied the equal protection of the laws guaranteed by the Constitution of the United States and it is a complete defense to a prosecution, and if you find that the defendant in this case was singled out for prosecution and other persons were not singled out for prosecution, you must acquit him.

Yick Wo v. Hopkins, 30 L. Ed. 220

Hysler v. Florida, 62 L. Ed. 584, 590

DEFENDANT'S INSTRUCTION No. 36

You are instructed that if the defendant has been singled out for invidious treatment by the law enforcement agencies in this case you must acquit him.

Hysler v. Florida, 62 L. Ed. 584, 590



## DEFENDANT'S INSTRUCTION No. 37

The Government, in offering Helen Merle Beverlin as a witness in respect to the reasons she went to Hawaii, represents that this testimony must be accepted as true, and they are therefore bound by such testimony, and you must consider the Government bound by such testimony.

United States v. Corlin, 44 Fed. Supp. 940

Dravo v. Fabel, 132 U. S. 487

## DEFENDANT'S INSTRUCTION No. 38-a

When a defendant has been formerly acquitted or convicted of a crime he is once in jeopardy and may not be legally convicted of that offense again. An acquittal may occur in many ways. It may be by trial before a jury or by operation of law. In this case the defendant has entered a plea of once in jeopardy on the ground that the acquittal of Helen Merle Beverlin of the charge of conspiracy to violate the Mann act acquitted him of the charge and therefore that he cannot be again tried.

It is for you to determine:

1. If it is the same act or transaction that is involved in both cases regarding which evidence has been presented before you, and whether the offenses were the same in each case.

2. If the parties were the same in each case.

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3. If there were no other persons involved in the case of conspiracy that Helen Merle Beverlin and Joseph Di Marzo.

If you find that the persons and parties and offense *and that only two persons were involved in the alleg* were the same in each case then an acquittal of Helen Merle Beverlin would operate to acquit the defendant and you would then have to find for the defendant on the plea of once in jeopardy.

#### DEFENDANT'S INSTRUCTION No. 40

You are instructed that the Constitution of the United States provides that no person can be twice placed in jeopardy on a criminal charge. Sometimes jeopardy results by operation of law. It is nevertheless a question of fact for you to find in this case.

It is the contention of the defendant that Helen Merle Beverlin, having been jointly charged with the defendant in indictment No. 15499 on the charge of conspiracy to violate the Mann Act, was placed in jeopardy by operation of law. That is to say, that the acquittal of Helen Merle Beverlin operated to acquit the defendant of the charge of conspiracy, and that since he was acquitted of the charge of conspiracy to violate the Mann Act he was acquitted of the offense for which he is here on trial. It is for you to find from the evidence if the parties were the same and if the offense was the same in both transactions, and if you do find that they [366] were the same, and if you find that Helen Merle Beverlin was acquitted and that by reason of that fact Joseph Di Marzo was acquitted,

then you must find for the defendant on the plea of once in jeopardy in this case.

### DEFENDANT'S INSTRUCTION No. 45

You are instructed that the word "cause" as applied to this case has a well-known legal meaning, that is to say, the definition of the word "cause" is: To be the agent of, in bringing about a result; to compel; to act as the cause or agent in producing; to make or force a given result. [367]

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[Title of Cause.]

No. 15,500-Crim.

### EXCEPTIONS

1. The defendant duly and regularly excepted to the ruling of the Court overruling the defendant's objections to the jurisdiction of the Court to try the defendant and refusal to continue the case until after the war.

2. The defendant duly and regularly excepted to the ruling of the Court overruling objections to the jurisdiction of the Court by reason of certain treaties between the United States and the Government of Italy, and by reason of his detention under a Presidential Order.

3. The defendant duly and regularly excepted to the ruling of the Court that the defendant could be given a fair and impartial trial, without passion and prejudice, as provided by the Fifth Amendment to the Constitution of the United States.

4. The defendant duly and regularly excepted to the jurisdiction of the civil courts to try him.

5. The defendant duly and regularly excepted to the ruling of the Court that he was not denied the equal protection of the laws as guaranteed by the Fifth Amendment to the Constitution of the United States and was not placed in a different position than other persons similarly situated.

6. The defendant duly and regularly excepted to the ruling of the Court that he was not denied the adequate right of counsel and the effective right of preparation guaranteed by the Sixth Amendment to the Constitution of the United States.

7. The defendant duly and regularly excepted to the ruling of the Court that it was not necessary for the panel of jurors in the federal court in California to have women, although it was stipulated that women are on the juries in all the state courts, and that the state laws so provide.

8. The defendant duly and regularly excepted to the refusal of the Court to impanel women on the petit jury, and to objections to the jury because the panel was not composed of both men and women, as the juries are composed in the state courts of California.

9. The defendant duly and regularly excepted to the ruling of the Court holding that he was not once in jeopardy by reason of the trial and acquittal of Helen Merle Beverlin.

10. The defendant duly and regularly excepted to the ruling of the Court that Helen Merle Bever-

lin was not an accomplice under the facts of this case.

11. The defendant duly and regularly excepted to the Court's ruling advising the jury to find against the defendant on the plea of once in jeopardy.

12. The defendant duly and regularly excepted to the failure of the Court to direct a verdict in favor of the defendant, both at the end of the Government's case and at the end of the entire case.

13. The defendant duly and regularly excepted to the ruling of the Court that the evidence was sufficient to support the verdict, and that the evidence was insufficient to sustain the defendant's plea of once in jeopardy.

14. The defendant duly and regularly excepted to the ruling of the Court in refusing to send instructions to the jury room, as requested by the jurors.

15. The defendant duly and regularly excepted to unauthorized comments between the Court and the jurors, not in open court.

16. The defendant duly and regularly excepted to the ruling of the Court permitting cross-examination by the Government of its own witness, Mannie Rosegarten, and in permitting highly prejudicial testimony in said cross-examination.

17. The defendant duly and regularly excepted to the admission of testimony of other acts and transactions not properly admissible under the case at bar.



18. The defendant duly and regularly excepted to the Court conducting proceedings in the absence of the defendant, in violation of the Fifth Amendment to the Constitution of the United States.

19. The defendant duly and regularly excepted to the denial of a motion for judgment of acquittal.

20. The defendant duly and regularly excepted to the testimony of other acts, facts and transactions with other girls.

21. The defendant duly and regularly excepted to the admission and exclusion of evidence throughout the trial of the case, which exceptions are duly noted in the record.

22. The defendant duly and regularly excepted to the introduction of evidence relating to and purporting to be related to other girls in other transactions not alleged in the indictment, and also of acts that did not constitute similar offenses, as violative of the Fifth Amendment to the Constitution of the United States. (Typewritten transcript, p. 117.)

23. The defendant duly and regularly excepted to the exclusion of evidence in the testimony of Helen Merle Beverlin that there was nothing the defendant could have done to stop her from going to Hawaii. (Typewritten transcript, pp. 140, 141.)

24. The defendant duly and regularly excepted to testimony relating to monies paid to the defendant not within the issues of the case. (Typewritten transcript, pp. 153-156.)

25. The defendant duly and regularly excepted

to the ruling of the Court permitting examination of Helen Merle Beverlin with relation to a broken jaw.

26. The defendant duly and regularly excepted to the ruling of the Court denying his motion for a new trial and in arrest of judgment and objections to the jurisdiction of the Court.

27. The defendant duly and regularly excepted to the judgment and sentence of the Court.

28. The defendant duly and regularly excepted to the admission of evidence of Joan Day regarding the alleged nature of her work as a prostitute. (Typewritten transcript, pp. 89, et seq.)

29. The defendant duly and regularly excepted to the ruling of the Court sustaining objections to the testimony of Helen Merle Beverlin. (Type-written transcript, pp. 240-243.)

30. The defendant duly and regularly excepted to the ruling of the Court denying the motions to direct the verdict both on the plea of not guilty and on the plea of once in jeopardy.

31. The defendant duly and regularly excepted to the procedure and proceedings in the trial of the case as violative of the Fifth and Sixth Amendments to the Constitution of the United States.

32. The defendant duly and regularly excepted to the refusal of certain instructions, as indicated on pages 263 to 274 of the typewritten transcript.

33. The defendant duly and regularly excepted to certain instructions given, indicated on pages 292 to 295 of the typewritten transcript, and to the advisory verdict on the question of former jeopardy, page 297.

34. The defendant duly and regularly excepted to the order denying a new trial and to the order denying motion in arrest of judgment.

MORRIS LAVINE

Attorney for Defendant and  
Appellant.

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[Title of District Court and Cause.]

ORDER EXTENDING TIME TO LODGE  
PROPOSED BILL OF EXCEPTIONS

Good cause appearing therefor,

It Is Hereby Ordered that the time within which the appellant, Joseph Di Marzo, may lodge his proposed bill of exceptions on the appeal in the above-entitled case be enlarged to a period of 40 days from this date, that the Government have 20 days after the date of lodging of said bill of exceptions to propose amendments and corrections, and that the Court have 10 days thereafter within which to engross the same.

Dated: October 19, 1942.

PEIRSON M. HALL

Judge Presiding

[Endorsed]: Filed Oct 20 1942.

At a stated term, to wit: The October Term 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the twenty-third day of November in the year of our Lord one thousand nine hundred and forty-two.

Present: Honorable Curtis D. Wilbur, Senior Circuit Judge, Presiding,  
Honorable Francis A. Garrecht, Circuit Judge,  
Honorable William Denman, Circuit Judge.

[Title of Cause.]

No. 10273

ORDER EXTENDING TIME TO FILE ASSIGNMENTS OF ERROR, AND TO SETTLE AND FILE BILL OF EXCEPTIONS

Upon consideration of the petition of appellant, and stipulation of counsel for appellee, and affidavit of Mr. Morris Lavine, counsel for appellant in support thereof, and good cause therefor appearing,

It Is Ordered that the time within which appellant may lodge his proposed bill of exceptions, and file his assignments of errors be, and hereby is extended to and including December 30, 1942; that the appellee United States of America may have to and including January 21, 1943 within which to file any proposed amendments to said bill of exceptions, and that the time within which

the bill of exceptions may be settled and filed be,  
and hereby is extended to and including January  
31, 1943.

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[Title of District Court and Cause.]

ORDER APPROVING BILL OF EXCEPTIONS

An order approving the Bill of Exceptions having been presented to this Court and having been amended to correspond with the facts, is now settled, signed, and made a part of the records within the term and within the time fixed by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: January 29th, 1943.

PEIRSON M. HALL

United States District Judge

Received copy of the within Proposed Bill of Exceptions this 30th day of December, 1942.

LEO V. SILVERSTEIN,

United States Attorney

By LV

Ass't United States Attorney

[Endorsed]: Lodged Dec. 30, 1942.

[Endorsed]: Filed Jan. 29, 1943.



[Endorsed]: No. 10273. United States Circuit Court of Appeals for the Ninth Circuit. Joseph Di Marzo, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed February 3, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.